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106TH CONGRESS
1ST SESSION

H. R. 2944

To promote competition in electricity markets and to provide consumers
with a reliable source of electricity, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1999

Mr. BARTON of Texas introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Transportation and Infrastructure, Resources, and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To promote competition in electricity markets and to provide
consumers with a reliable source of electricity, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Electricity Competition and Reliability Act”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. State laws or regulations not affected.

TITLE I—OPEN TRANSMISSION ACCESS

- Sec. 101. Clarification of State authority regarding retail electric competition;
clarification of Federal and State jurisdiction.
- Sec. 102. Open access for all transmitting utilities.
- Sec. 103. Regional transmission organizations.
- Sec. 104. Regional transmission siting agencies.
- Sec. 105. Expansion of interstate transmission facilities.
- Sec. 106. Conforming amendments.
- Sec. 107. Savings clause.

TITLE II—ELECTRIC RELIABILITY

- Sec. 201. Electric reliability.

TITLE III—CONSUMER PROTECTION

- Sec. 301. Electric supplier information disclosure.
- Sec. 302. Consumer privacy.
- Sec. 303. Electric supply unfair trade practices.
- Sec. 304. Universal and affordable service.
- Sec. 305. Definitions.

TITLE IV—MERGERS

- Sec. 401. Electric company mergers and disposition of property.
- Sec. 402. Elimination of review by the Nuclear Regulatory Commission.
- Sec. 403. Antitrust savings clause.

TITLE V—PROMOTING COMPETITION

Subtitle A—Public Utility Holding Company Act of 1935

- Sec. 501. Definitions.
- Sec. 502. Repeal of the Public Utility Holding Company Act of 1935.
- Sec. 503. Federal access to books and records.
- Sec. 504. State access to books and records.
- Sec. 505. Exemption authority.
- Sec. 506. Affiliate transactions.
- Sec. 507. Applicability.
- Sec. 508. Effect on other regulations.
- Sec. 509. Enforcement.
- Sec. 510. Savings provisions.

- Sec. 511. Implementation.
- Sec. 512. Transfer of resources.
- Sec. 513. Effective date.
- Sec. 514. Conforming amendment to the Federal Power Act.

Subtitle B—Public Utility Regulatory Policies Act of 1978

- Sec. 521. Prospective repeal.
- Sec. 522. Recovery of costs.
- Sec. 523. Definitions.

Subtitle C—Additional Provisions Promoting Competition

- Sec. 531. Aggregation.
- Sec. 532. Interconnection.

TITLE VI—FEDERAL ELECTRIC UTILITIES

Subtitle A—Tennessee Valley Authority

- Sec. 601. Definitions.
- Sec. 602. Wholesale competition in the Tennessee Valley Region.
- Sec. 603. Tennessee Valley Authority power sales.
- Sec. 604. Tennessee Valley Authority electric generation facilities.
- Sec. 605. Renegotiation of all requirements power contracts.
- Sec. 606. Regulation of Tennessee Valley Authority transmission system.
- Sec. 607. Regulation of Tennessee Valley Authority distributors.
- Sec. 608. Stranded cost recovery.
- Sec. 609. Application of antitrust law.
- Sec. 610. Savings provision.

Subtitle B—Bonneville Power Administration

- Sec. 621. Definitions.
- Sec. 622. Regulation of Bonneville Transmission System.
- Sec. 623. Surcharge on transmission rates to recover nonrecoverable power costs.
- Sec. 624. Limit on retail sales by Bonneville Power Administration.
- Sec. 625. Acquisition of new major generating resources.
- Sec. 626. Application of antitrust law.
- Sec. 627. Conforming amendments.

Subtitle C—Other Power Marketing Administrations

- Sec. 631. Definitions.
- Sec. 632. Wholesale power sales by Federal power marketing administrations.
- Sec. 633. Regulation of Federal power marketing administration transmission systems.
- Sec. 634. Accounting.
- Sec. 635. Application of antitrust law.

TITLE VII—ENVIRONMENTAL PROVISIONS

- Sec. 701. Renewable energy production incentive.
- Sec. 702. Net metering.
- Sec. 703. State renewable energy portfolio standards.

TITLE VIII—PROVISIONS RELATING TO INTERNAL REVENUE
CODE

【Text of title VIII identical to text of title VIII of H.R. 2944】

TITLE IX—MISCELLANEOUS PROVISIONS

Sec. 901. Study.

Sec. 902. Study of State regulation.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Electricity is generated, transmitted, dis-
4 tributed, and sold in interstate commerce and used
5 in virtually every home, commercial enterprise, and
6 manufacturing facility in the United States and sub-
7 stantially affects interstate commerce in other goods
8 and services.

9 (2) Americans consume electricity worth more
10 than \$250,000,000,000 a year, approximately half of
11 which is for residential purposes. The monthly elec-
12 tric utility bill is one of the largest expenses for most
13 households.

14 (3) Traditional monopoly rate-of-return regula-
15 tion of electricity has stifled competition, resulting in
16 high electricity rates for many consumers and few
17 incentives for technological innovation and good cus-
18 tomer service by electric utilities.

19 (4) Twenty-four States, representing over
20 163,000,000 people and over 60 percent of the pop-
21 ulation of the United States, have approved pro-

1 grams to allow consumers to choose their retail elec-
2 tric suppliers. State retail competition laws have ad-
3 dressed stranded cost recovery, public benefits, and
4 other issues, and Congress encourages the remaining
5 States to address stranded cost recovery as they
6 open their retail electric markets.

7 (5) High electricity rates are regressive, placing
8 a disproportionate burden on low-income ratepayers.
9 A competitive electric generation industry will pro-
10 vide benefits to all consumers by fostering fairness,
11 innovation, and efficiency, rather than allow cost
12 shifting that lowers rates to some consumers but
13 raises rates to others.

14 (6) The cost of electricity has a direct effect on
15 the price, profitability, and competitiveness of goods
16 and services produced in the United States.

17 (7) Lower priced electricity and improved reli-
18 ability can be realized by competition among electric
19 suppliers.

20 (8) The development of vigorous competition in
21 the retail electric markets will—

22 (A) reduce the costs of electric energy to
23 even the smallest consumers of electricity;

24 (B) create jobs as American businesses are
25 able to lower costs and better compete in world

1 markets and against foreign competition here at
2 home;

3 (C) result in a more efficient utility indus-
4 try; and

5 (D) improve the services available to con-
6 sumers.

7 (9) Federal programs to benefit rural consum-
8 ers have succeeded, and rural America has been elec-
9 trified. However, competition will assure reliable,
10 reasonably priced rural electric service. Rural con-
11 sumers should be able to purchase a broad range of
12 services from retail electric suppliers.

13 (10) The Nation's interconnected electricity
14 generation, transmission, and local distribution sys-
15 tems critically affect the economy and productivity
16 of the United States, and the health, safety, welfare,
17 and security of all Americans.

18 (11) Congress has authority to enact laws,
19 under the Commerce Clause of the United States
20 Constitution, regarding the generation, transmission,
21 distribution, and sale of electric energy in interstate
22 commerce.

23 (12) The success of competition in the whole-
24 sale electric market under the Energy Policy Act of
25 1992 and open access under Orders No. 888 and

1 889 of the Federal Energy Regulatory Commission,
2 as well as innovations in electric generation and
3 transmission technologies, indicate that retail elec-
4 tric competition will substantially benefit all classes
5 of United States electric consumers, including resi-
6 dential, commercial, industrial, and other consumers.

7 (b) PURPOSE.—The purpose of this Act is to benefit
8 American electric consumers through lower electric rates,
9 higher quality services, and a more robust United States
10 economy by encouraging retail and wholesale competition
11 in electric markets and to provide consumers with reliable
12 electric service, and for other purposes.

13 **SEC. 3. STATE LAWS OR REGULATIONS NOT AFFECTED.**

14 To the extent that any State law or regulatory order
15 adopted before the date three years after the date of enact-
16 ment of this Act addresses any matter addressed by any
17 of the following provisions, such State law or regulatory
18 order shall govern such matter in lieu of the following pro-
19 visions:

20 (1) Title III of this Act (relating to consumer
21 protection).

22 (2) Section 210(f) of the Federal Power Act, as
23 added by section 532 of this Act (relating to inter-
24 connection).

1 (3) Section 219 of the Federal Power Act, as
2 added by section 531 of this Act (relating to aggre-
3 gation).

4 (4) Section 702 of this Act (relating to net me-
5 tering).

6 **TITLE I—OPEN TRANSMISSION**
7 **ACCESS**

8 **SEC. 101. CLARIFICATION OF STATE AUTHORITY REGARD-**
9 **ING RETAIL ELECTRIC COMPETITION; CLARI-**
10 **FICATION OF FEDERAL AND STATE JURISDIC-**
11 **TION.**

12 (a) STATE AUTHORITY TO ORDER RETAIL ELECTRIC
13 COMPETITION.—Section 201(b) of the Federal Power Act
14 is amended by adding the following new paragraph after
15 paragraph (2):

16 “(3) This Act shall not affect the authority of a State
17 or municipality to require retail electric competition or to
18 require the unbundling of transmission and local distribu-
19 tion service for the delivery of electric energy directly to
20 a retail electric consumer.”.

21 (b) CLARIFICATION OF FEDERAL AND STATE JURIS-
22 DICTION.—(1) Section 201(a) of the Federal Power Act
23 (16 U.S.C. 824(a)) is amended as follows:

24 (A) By inserting after “transmission of electric
25 energy in interstate commerce” the following: “, in-

1 including the unbundled transmission of electric en-
2 ergy sold at retail,”.

3 (B) By striking “such Federal regulation, how-
4 ever, to extend only to those matters which are not
5 subject to regulation by the States.” and inserting in
6 lieu thereof “such Federal regulation shall not ex-
7 tend, however, to any bundled retail sale of electric
8 energy, to any local distribution service component
9 of any unbundled retail sale of electric energy, or to
10 any retail sale component of any unbundled retail
11 sale of electric energy, which are each subject to reg-
12 ulation by the States.”.

13 (2) Section 201(b)(1) of the Federal Power Act (16
14 U.S.C. 824(b)(1)) is amended as follows:

15 (A) By inserting after “the transmission of
16 electric energy in interstate commerce” the follow-
17 ing: “, including the unbundled transmission of elec-
18 tric energy sold at retail,”.

19 (B) In the last sentence, before the period by
20 inserting “, nor shall the Commission have jurisdic-
21 tion over the transmission of any bundled retail sale
22 of electric energy”.

23 (c) DEFINITIONS OF TYPES OF SALES.—Section 3 of
24 the Federal Power Act (16 U.S.C. 796) is amended by
25 adding at the end the following:

1 “(26) The term ‘bundled retail sale of electric
2 energy’ means the sale of electric energy to a retail
3 electric consumer in which the electric energy and
4 transmission services are not sold separately.

5 “(27) The term ‘local distribution service’
6 means all services necessary to, or customarily pro-
7 vided in, the delivery of electric energy to a retail
8 electric consumer through local distribution facilities,
9 including the construction, maintenance, and oper-
10 ation of local distribution facilities, the metering and
11 billing of retail sales, and any related accounting,
12 management, and other services.

13 “(28) The term ‘unbundled retail sale of elec-
14 tric energy’ means the sale of electric energy to a re-
15 tail electric consumer in which electric energy and
16 transmission service or local distribution service are
17 sold separately.

18 “(29) The term ‘unbundled transmission of
19 electric energy sold at retail’ means the transmission
20 of electric energy to a retail electric consumer if the
21 electric energy and the service of transmitting it are
22 sold separately.”.

23 (d) STATE PUBLIC PURPOSE CHARGES.—Section
24 201(b) of the Federal Power Act is amended by adding
25 the following new paragraph after paragraph (3):

1 “(4) This Act shall not affect the authority of a State
2 or municipality to require as a charge for delivery of elec-
3 tric energy to, or as a condition for the purchase or receipt
4 of electric energy by, any retail electric consumer located
5 in such State the payment of any charge deemed necessary
6 by such State or municipality for any purpose, including
7 any of the following:

8 “(A) To recover transition costs.

9 “(B) To ensure that adequate electric service is
10 available to all retail electric consumers served by a
11 local distribution company.

12 “(C) To ensure and enhance the reliability of
13 retail electric service.

14 “(D) To fund assistance to low-income retail
15 electric consumers.

16 “(E) To encourage environmental, emerging en-
17 ergy technology, energy efficiency, or energy con-
18 servation programs.

19 “(F) To provide for transition costs of electric
20 utility workers.

21 Nothing in this paragraph shall require a State or munici-
22 pality to impose any such charges.”.

23 (e) DETERMINATION OF TRANSMISSION FACILI-
24 TIES.—Section 201 of the Federal Power Act is amended
25 by adding the following new subsection at the end thereof:

1 “(h) DETERMINATION OF TRANSMISSION FACILI-
2 TIES.—

3 “(1) DETERMINATION.—Upon application by a
4 State commission, electric utility, transmitting util-
5 ity, or local distribution company, the Commission
6 may determine whether a particular facility used for
7 the transportation of electric energy is a trans-
8 mission facility subject to the jurisdiction of the
9 Commission.

10 “(2) COMMISSION FINDINGS.—The Commission
11 shall make a determination under paragraph (1) in
12 accordance with the following factors associated with
13 the facility:

14 “(A) Function and purpose.

15 “(B) Size.

16 “(C) Location.

17 “(D) Voltage level and other technical
18 characteristics.

19 “(E) Historical, current and planned usage
20 patterns.

21 “(F) Interconnection and coordination with
22 other facilities.

23 “(G) Any other factor the Commission
24 deems relevant.

1 In making such determination, the Commission shall
2 consider any position taken by the appropriate State
3 commission.”.

4 (f) FEDERAL FACILITIES.—(1) Section 201 of the
5 Federal Power Act is amended by adding at the end the
6 following:

7 “(h) Nothing in this Act preempts the application of
8 State utility laws with respect to the retail sale of electric
9 energy to or the provision of local distribution service to
10 a facility of a department, agency, or instrumentality of
11 the United States.”.

12 (2) Section 201(d) of the Federal Power Act is
13 amended by adding the following immediately before the
14 period at the end thereof: “; except that nothing in this
15 section shall be construed as providing jurisdiction to the
16 Commission pursuant to this Act under circumstances
17 where any department, agency, or instrumentality of the
18 United States received electric service as of July 1, 1999,
19 which service was priced pursuant to retail tariffs ap-
20 proved in accordance with State law by a State regulatory
21 agency.”.

22 (3) Section 212(h) of the Federal Power Act is
23 amended by adding the following new sentence at the end
24 thereof: “Nothing in this subsection and no order issued
25 under this Act shall require the transmission of electric

1 energy to any Federal department, agency, or instrumen-
2 tality that purchases electric energy in a manner inconsis-
3 ent with State law governing the provision of electric util-
4 ity service, including State utility commission rulings and
5 electric utility franchises, certificates, or service territories
6 established pursuant to State statute, State regulation, or
7 State-approved territorial agreements.”.

8 (4) Section 3(19) of the Federal Power Act is amend-
9 ed by adding the following immediately before the period:
10 “, but shall not include any department, agency, or instru-
11 mentality that purchases electric energy from any electric
12 utility for consumption or distribution or for both con-
13 sumption and distribution within the boundaries where
14 such department, agency, or instrumentality owns, oper-
15 ates, or controls facilities for such consumption or dis-
16 tribution.”.

17 **SEC. 102. OPEN ACCESS FOR ALL TRANSMITTING UTILI-**
18 **TIES.**

19 (a) OPEN ACCESS TRANSMISSION AUTHORITY.—Sec-
20 tion 206 of the Federal Power Act is amended by adding
21 the following new subsection after subsection (d):

22 “(e) OPEN ACCESS TRANSMISSION SERVICES.—

23 “(1) PUBLIC UTILITIES.—Under section 205
24 and this section, the Commission may, by rule or
25 order, require public utilities to provide transmission

1 services on a not unduly discriminatory or pref-
2 erential basis, subject to section 212(h), and may
3 authorize recovery of wholesale stranded costs, as
4 defined by the Commission, arising from any re-
5 quirement to provide transmission services on such
6 a basis. This paragraph applies to any rule or order
7 promulgated by the Commission before, on, or after
8 the date of enactment of this subsection.

9 “(2) TRANSMITTING UTILITIES.—

10 “(A) Subject to section 212(h), the Com-
11 mission may, by rule or order, require transmit-
12 ting utilities that are not public utilities (other
13 than the Federal power marketing administra-
14 tions, the Tennessee Valley Authority, and utili-
15 ties to which section 212(k) applies) to provide
16 transmission services—

17 “(i) at rates that are comparable to
18 those each such transmitting utility
19 charges itself and that are not unduly dis-
20 criminatory or preferential, and

21 “(ii) on terms and conditions (not re-
22 lating to rates) that are comparable to
23 those required under paragraph (1) for
24 transmission service provided by public
25 utilities.

1 In exercising its authority under this subpara-
2 graph, the Commission may remand trans-
3 mission rates to a transmitting utility for re-
4 view and revision where necessary. The Com-
5 mission may authorize recovery of wholesale
6 stranded costs, as defined by the Commission,
7 arising from any requirement to provide trans-
8 mission service under this paragraph.

9 “(B)(i) Within 180 days after the date of
10 enactment of this subsection, after notice and
11 opportunity for comment, the Commission shall
12 adopt rules providing criteria and procedures to
13 exempt certain transmitting utilities from sub-
14 paragraph (A). The Commission shall exempt
15 from subparagraph (A) any transmitting utility
16 that is a small electric utility that does not own
17 or operate any transmission facilities that are
18 part of the bulk-power system, or that meets
19 other criteria the Commission determines to be
20 in the public interest.

21 “(ii) The procedures established by the
22 Commission shall permit exemptions, after no-
23 tice and opportunity for comment, based on a
24 letter application containing a sworn statement,
25 by a representative legally authorized to bind

1 the applicant, attesting to the facts demonstrat-
2 ing that the applicant meets the exemption
3 standards. A good faith application for an ex-
4 emption shall be deemed granted unless, within
5 60 days of its receipt of such application, the
6 Commission makes a determination that the ap-
7 plicant does not meet the exemption criteria.

8 “(iii) Upon complaint of any electric utility
9 or transmitting utility and after notice and op-
10 portunity for comment, the Commission may re-
11 voke an exemption if it determines the trans-
12 mitting utility does not satisfy the exemption
13 criteria. In determining whether a transmitting
14 utility owns or operates transmission facilities
15 that are part of the bulk-power system, the
16 Commission shall consider any position taken
17 by the electric reliability organization or an af-
18 filiated regional reliability entity in the region
19 where the transmitting utility is located.

20 “(iv) For purposes of this subparagraph,
21 the term ‘small electric utility’ means an elec-
22 tric utility that sells no more than 4,000,000
23 megawatt hours of electric energy per year; and
24 the terms ‘affiliated regional reliability entity’,
25 ‘bulk-power system’, and ‘electric reliability or-

1 ganization' have the meanings given such terms
2 in section 218(a).

3 “(3) CERTAIN WHOLESALE STRANDED
4 COSTS.—The Commission shall authorize recovery of
5 wholesale stranded costs of a public utility or trans-
6 mitting utility that occur when retail electric con-
7 sumers cease to be served by that public utility or
8 transmitting utility by reason of the establishment of
9 a local distribution company owned or operated by
10 a State or a political subdivision of a State serving
11 such consumers. In calculating such wholesale
12 stranded costs, the Commission shall use a reason-
13 able expectation period that is based on the weighted
14 average remaining useful life of generation assets
15 owned or power purchased under contract by the
16 public utility and included in wholesale or retail
17 rates in effect on July 9, 1996. This paragraph shall
18 apply to wholesale stranded cost determinations
19 made by the Commission before, on, or after the
20 date of enactment of this paragraph.”.

21 (b) RETAIL WHEELING IN RETAIL COMPETITION
22 STATES.—Section 212(h) of the Federal Power Act is
23 amended as follows:

24 (1) By inserting “(1)” before “No”.

1 (2) By striking “(1)”, “(2)”, “(A)”, and “(B)”
2 and inserting in their places “(A)”, “(B)”, “(i)”,
3 and “(ii)” respectively.

4 (3) By striking from redesignated paragraph
5 (1)(B)(ii) “the date of enactment of this subsection”
6 and inserting “October 24, 1992,”.

7 (4) By adding the following new paragraph at
8 the end:

9 “(2) Notwithstanding paragraph (1), the Commission
10 may issue an order that requires the transmission of elec-
11 tric energy for purposes of a sale of such energy to retail
12 electric consumers served by local distribution facilities
13 that are subject to open access, consistent with State
14 law.”.

15 (c) CONFORMING AMENDMENTS.—(1) Section 3(23)
16 of the Federal Power Act (16 U.S.C. 796) is amended to
17 read as follows:

18 “(23) TRANSMITTING UTILITY.—The term
19 ‘transmitting utility’ means any entity (including a
20 State or municipal entity) that owns or operates fa-
21 cilities used for the transmission of electric energy in
22 interstate commerce.”.

23 (2) Section 3(24) of the Federal Power Act is amend-
24 ed to read as follows:

1 “(24) ‘transmission services’ means the trans-
2 mission of electric energy sold or to be sold.”.

3 (3) Section 211(a) of the Federal Power Act is
4 amended by striking “for resale”.

5 (4) Section 212(a) of the Federal Power Act is
6 amended by striking “wholesale” each time it appears, ex-
7 cept the last time.

8 (5) Section 3 of the Federal Power Act is amended
9 by adding the following at the end thereof:

10 “(30) LOCAL DISTRIBUTION COMPANY.—The
11 term ‘local distribution company’ means any entity
12 which owns, controls, or operates, for public use,
13 local distribution facilities.

14 “(31) LOCAL DISTRIBUTION FACILITIES.—The
15 term ‘local distribution facilities’ means any facilities
16 used for the local distribution of electric energy.
17 Such term does not include any facilities determined
18 under section 201(h) to be transmission facilities.

19 “(32) MARKET PARTICIPANT.—The term ‘mar-
20 ket participant’ means any entity that generates,
21 sells, or aggregates electric power (other than State-
22 ordered transition or default service) that is trans-
23 mitted on the transmission system operated by a re-
24 gional transmission organization. Any entity that is
25 the owner of the regional transmission organization

1 and does not generate, sell, or aggregate electric
2 power shall not be considered a market participant,
3 except that an entity is not a market participant by
4 reason of providing State-ordered transition service,
5 default service, or generation service necessary to
6 provide reactive power or such other generation serv-
7 ice incidental to provide transmission service.

8 “(33) OPEN ACCESS.—The term ‘open access’,
9 with respect to local distribution facilities, means
10 that the local distribution company that owns, con-
11 trols, or operates the facilities offers not unduly dis-
12 criminatory or preferential access to the facilities.

13 “(34) RETAIL ELECTRIC CONSUMER.—The
14 term ‘retail electric consumer’ means any person
15 who purchases electric energy for ultimate consump-
16 tion.

17 “(35) RETAIL ELECTRIC SUPPLIER.—The term
18 ‘retail electric supplier’ means any person who sells
19 electric energy to a retail electric consumer for ulti-
20 mate consumption.

21 “(36) STATE REGULATED ELECTRIC UTILITY.—
22 The term ‘State regulated electric utility’ means any
23 electric utility with respect to which a State commis-
24 sion has ratemaking authority.”.

1 (d) FOREIGN COMMERCE.—(1) Section 201(c) of the
2 Federal Power Act (16 U.S.C. 824(c)) is amended by
3 striking “thereof:” and inserting “thereof (including con-
4 sumption in a foreign country),”.

5 (2) Section 202(f) of the Federal Power Act is re-
6 pealed.

7 **SEC. 103. REGIONAL TRANSMISSION ORGANIZATIONS.**

8 (a) FINDINGS.—The Congress—

9 (1) finds that the formation of regional trans-
10 mission organizations will improve the transmission
11 of electric energy in interstate commerce and the re-
12 liability of the bulk-power system; and

13 (2) encourages the formation of regional trans-
14 mission organizations.

15 (b) REGIONAL TRANSMISSION ORGANIZATIONS.—
16 Section 202 of the Federal Power Act is amended by add-
17 ing the following new subsections after subsection (g):

18 “(h) REGIONAL TRANSMISSION ORGANIZATIONS.—

19 “(1) IN GENERAL.—After notice and an oppor-
20 tunity for a hearing, the Commission shall approve
21 an application by one or more transmitting utilities
22 to establish or join a regional transmission organiza-
23 tion if the Commission determines the regional
24 transmission organization meets the standards in
25 paragraph (2). The Commission shall apply the

1 standards in paragraph (2) without regard to the
2 specific structure, type, or form of proposed regional
3 transmission organization. If a transmitting utility
4 applies to establish or join a regional transmission
5 organization that meets the standards in paragraph
6 (2), the Commission shall have no authority to re-
7 quire the transmitting utility to participate in a dif-
8 ferent regional transmission organization. Nor shall
9 the Commission have the authority to add terms or
10 conditions different from those in such application
11 without affording a transmitting utility the oppor-
12 tunity of withdrawing from the transmission organi-
13 zation if it finds those additional terms and condi-
14 tions to be unacceptable. The Commission may ap-
15 prove a regional transmission organization that does
16 not meet all the standards in paragraph (2) if the
17 Commission determines that the regional trans-
18 mission organization contains features that are con-
19 sistent with or superior to the standards listed in
20 paragraph (2).

21 “(2) STANDARDS FOR REGIONAL TRANSMISSION
22 ORGANIZATIONS.—The Commission shall make a de-
23 termination under paragraph (1) in accordance with
24 the following standards:

1 “(A) INDEPENDENCE.—The regional
2 transmission organization must be independent
3 of all market participants, and no market par-
4 ticipant or class of market participants may ex-
5 ercise control over the operation of the regional
6 transmission organization. For purposes of de-
7 termining whether a regional transmission orga-
8 nization is independent of all market partici-
9 pants, ownership of passive, nonvoting interests
10 in a regional transmission organization, or own-
11 ership of 5 percent or less of the voting inter-
12 ests in the regional transmission organization,
13 shall be deemed not to confer control over the
14 regional transmission organization for purposes
15 of this subparagraph. For purposes of this sub-
16 paragraph, the term ‘voting interest’ shall not
17 include the right to participate in major organic
18 corporate changes to the regional transmission
19 organization that affect the ownership status of
20 the nonvoting interests.

21 “(B) SCOPE AND CONFIGURATION.—The
22 regional transmission organization must operate
23 transmission facilities that comprise an appro-
24 priate scope and regional configuration. In de-
25 termining whether a regional transmission orga-

1 nization contains an appropriate scope and con-
2 figuration, the Commission shall consider the
3 following factors:

4 “(i) Performance of essential regional
5 transmission organization functions.

6 “(ii) Electricity trading patterns.

7 “(iii) Exercise of market power not
8 subject to State regulation.

9 “(iv) Existing control areas.

10 “(v) Existing regional transmission
11 entities.

12 “(vi) Contiguity of geographic area.

13 “(vii) Interconnection of regional
14 transmission organization transmission
15 systems.

16 “(viii) International boundaries.

17 “(C) OPERATIONAL AUTHORITY.—The re-
18 gional transmission organization must possess
19 operational authority over all transmission fa-
20 cilities under its control.

21 “(D) EXPANSION.—The regional trans-
22 mission organization must be responsible (i) for
23 planning necessary additions and upgrades to
24 the transmission system under the operational
25 control of the regional transmission organiza-

1 tion that will enable it to provide efficient, reli-
2 able, not unduly discriminatory or preferential
3 transmission service; and (ii) for coordinating
4 such efforts with the appropriate State authori-
5 ties.

6 “(3) FEDERAL TRANSMISSION FACILITIES.—

7 The Tennessee Valley Authority, the Bonneville
8 Power Administration, the Southwestern Power Ad-
9 ministration, and the Western Area Power Adminis-
10 tration are each authorized to participate in a re-
11 gional transmission organization after conducting a
12 public process in the relevant region to receive com-
13 ments. Notwithstanding any other law, participation
14 may include delegation of operation and control of
15 the transmission system concerned to a regional
16 transmission organization or other method of par-
17 ticipation, under terms and conditions the Tennessee
18 Valley Authority or the power marketing administra-
19 tion concerned determines necessary or appropriate,
20 including being bound by operational and other or-
21 ders of the regional transmission organization and
22 by the results of arbitration of disputes with the or-
23 ganization or with other participants.

24 “(4) STATE AUTHORITY NOT AFFECTED.—

25 Nothing in this subsection affects the authority of

1 States to regulate transmission facility maintenance,
2 planning, siting, and other utility functions.

3 “(5) EXISTING REGIONAL TRANSMISSION ORGA-
4 NIZATION.—Nothing in this subsection authorizes
5 the Commission to require any change in a regional
6 transmission organization or comparable organiza-
7 tion approved by the Commission or in operation be-
8 fore the date of enactment of this subsection, except
9 that any transmitting utility that is a member of
10 such organization may file an application pursuant
11 to this subsection to join another regional trans-
12 mission organization or to seek changes to any exist-
13 ing organization of which it is a member.”.

14 **SEC. 104. REGIONAL TRANSMISSION SITING AGENCIES.**

15 (a) IN GENERAL.—Part II of the Federal Power Act
16 (16 U.S.C. 824 and following) is amended by adding at
17 the end the following section:

18 **“SEC. 215. REGIONAL TRANSMISSION SITING AGENCIES.**

19 “(a) CONSENT.—The consent of Congress is given for
20 compacts among two or more States to establish regional
21 transmission siting agencies to—

22 “(1) facilitate coordination among the States
23 within a particular region with regard to the siting
24 of future transmission facilities;

1 “(2) carry out State transmission facility siting
2 responsibilities;

3 “(3) meet the other requirements of this section
4 and rules prescribed by the Commission under this
5 section; and

6 “(4) otherwise be consistent with the public in-
7 terest.

8 “(b) AUTHORITY.—If the Commission determines
9 that a compact meets the requirements of subsection (a),
10 the agency established under the compact has such au-
11 thority with respect to matters otherwise within the juris-
12 diction of the Commission as is expressly provided in the
13 compact and is necessary or appropriate for carrying out
14 the siting responsibilities of the agency. The Commission’s
15 determination under this section may be subject to any
16 terms and conditions the Commission determines are nec-
17 essary or appropriate to ensure that the compact is in the
18 public interest.

19 “(c) RULES.—(1) The Commission shall prescribe by
20 rule—

21 “(A) criteria for determining whether a com-
22 pact is consistent with subsection (a); and

23 “(B) standards for its administration of a re-
24 gional transmission siting agency established under
25 the compact.

1 “(2) The rule shall require that—

2 “(A) a regional transmission siting agency oper-
3 ate within a region that includes all or part of each
4 State that is a party to the compact;

5 “(B) a regional transmission siting agency be
6 composed of one or more members from each State
7 that is a party to the compact;

8 “(C) each participating State vest in the re-
9 gional transmission siting agency the authority to
10 carry out the compact and this section; and

11 “(D) the agency follow reasonable procedures in
12 making its decisions, in governing itself, and in car-
13 rying out its authorities under the compact, includ-
14 ing judicial review.

15 “(3) The rule may include any other requirement to
16 ensure that the regional transmission siting agency’s orga-
17 nization, practices, and procedures are sufficient to carry
18 out this section and the rules promulgated under it.

19 “(d) TERMINATION.—The Commission, after notice
20 and opportunity for comment, may terminate the approval
21 of a compact under this section at any time if it deter-
22 mines that the regional transmission siting agency fails
23 to comply with the provisions of this section or Commis-
24 sion rules under subsection (c) or that the compact is con-
25 trary to the public interest.”.

1 **SEC. 105. EXPANSION OF INTERSTATE TRANSMISSION FA-**
2 **CILITIES.**

3 (a) IN GENERAL.—Part II of the Federal Power Act
4 (16 U.S.C. 824 and following) is amended by adding at
5 the end the following section:

6 **“SEC. 216. EXPANSION OF INTERSTATE TRANSMISSION FA-**
7 **CILITIES.**

8 “(a) COMMISSION AUTHORITY.—Upon the applica-
9 tion of an electric utility or transmitting utility, if the
10 Commission determines, after notice and opportunity for
11 hearing, that such action is in the public interest, it may
12 issue an order requiring a transmitting utility (other than
13 a transmitting utility exempted under section
14 206(e)(2)(B)) to enlarge, extend, or improve its facilities
15 for the transmission of electric energy in interstate com-
16 merce. The transmitting utility ordered to enlarge, extend,
17 or improve its facilities may apply to the Commission for
18 an order terminating or modifying the order if the trans-
19 mitting utility demonstrates, and the Commission deter-
20 mines, that the transmitting utility has failed, after mak-
21 ing a good faith effort, to obtain the necessary approvals
22 or property rights under applicable Federal, State, and
23 local laws.

24 “(b) COMPLIANCE WITH OTHER LAWS.—Commis-
25 sion action under this section shall be subject to the Na-
26 tional Environmental Policy Act of 1969 (42 U.S.C. 4321

1 and following) and all other applicable State and Federal
2 laws. This section does not affect the authority of States
3 or political subdivisions of States to site transmission fa-
4 cilities under applicable State and local laws.

5 “(c) USE OF JOINT BOARDS.—Before issuing an
6 order under subsection (a), the Commission shall refer the
7 matter to a joint board for advice and recommendations
8 on the need for, design of, and location of the proposed
9 enlargement, extension, or improvement. The Commission
10 shall consider the advice and recommendations of such
11 board before ordering any such enlargement, extension, or
12 improvement. Any such board shall be composed of a
13 member or members, as determined by the Commission,
14 from the State or each of the States affected or to be af-
15 fected by such matter, from each Federal agency affected
16 or to be affected by such matter, and from the Commis-
17 sion. Any such board shall be vested with the same power
18 and be subject to the same duties and liabilities as in the
19 case of a member of the Commission when designated to
20 hold any hearings. The action of such board shall have
21 such force and effect and its proceedings shall be con-
22 ducted in such manner as the Commission shall by regula-
23 tions provide. The State member or members of such
24 board shall be appointed by the Commission from persons
25 nominated by the State commission of each State affected,

1 or by the Governor of such State if there is no State com-
2 mission. Each State affected shall be entitled to the same
3 number of representatives on the board unless the nomi-
4 nating power of such State waives such right. The Com-
5 mission shall have the discretion to reject the nominee
6 from any State, but shall thereupon invite a new nomina-
7 tion from that State. The Federal member or members
8 from agencies other than the Commission shall be ap-
9 pointed by the Commission in consultation with the head
10 of such agency or agencies. The Commission member or
11 members of such board shall be appointed by the chair-
12 man, in consultation with the Commission. The Commis-
13 sion may, when in its discretion sufficient reason exists
14 therefor, terminate such a board.

15 “(d) LIMITATION ON AUTHORITY.—The Commission
16 shall have no authority to compel a transmitting utility
17 to extend or improve its transmission facilities if such en-
18 largement, extension, or improvement would unreasonably
19 impair the ability of the transmitting utility to provide
20 adequate service to its customers.”.

21 (b) STANDARDS FOR ESTABLISHING RATES,
22 CHARGES, TERMS, AND CONDITIONS FOR TRANSMISSION
23 SERVICE.—Part II of the Federal Power Act is amended
24 by adding at the end thereof the following new section:

1 **“SEC. 217. STANDARDS FOR ESTABLISHING RATES,**
2 **CHARGES, TERMS, AND CONDITIONS FOR**
3 **TRANSMISSION SERVICE.**

4 “(a) RECOVERY OF COSTS.—In reviewing rates,
5 charges, terms, and conditions for transmission services
6 under this Act, the Commission shall permit a transmit-
7 ting utility to recover the costs incurred by the utility in
8 connection with the transmission services and necessary
9 associated services, including, but not limited to, the costs
10 of any enlargement of transmission facilities.

11 “(b) CONSIDERATION OF COST AND BENEFIT.—In
12 reviewing the rates, charges, terms, and conditions of
13 transmission services that are provided by a regional
14 transmission organization and that make use of facilities
15 constructed after the date of enactment of this section,
16 the Commission shall take into account the incremental
17 cost and the benefit to interconnected transmission sys-
18 tems of such facilities.

19 “(c) CERTAIN REQUIREMENTS.—Rates, charges,
20 terms and conditions established pursuant to subsections
21 (a) and (b) shall—

22 “(1) be just and reasonable and not unduly dis-
23 criminatory or preferential; and

24 “(2) promote the economically efficient trans-
25 mission of electricity, the expansion of transmission
26 networks, the introduction of new transmission tech-

1 nologies, and the provision of transmission services
2 by regional transmission organizations.

3 “(d) VOLUNTARY INNOVATIVE PRICING POLICIES.—

4 Notwithstanding subsection (a) of this section, the Com-
5 mission shall encourage innovative pricing policies volun-
6 tarily filed by transmitting utilities. Innovative pricing
7 policies include policies that—

8 “(1) provide incentives to transmitting utilities
9 to promote the voluntary participation in and forma-
10 tion of regional transmission organizations, without
11 having the effect of forcing transmitting utilities to
12 join regional transmission organizations and extend
13 such incentives to transmitting utilities that already
14 have formed a regional transmission organization;

15 “(2) limit the charging of multiple rates for
16 transmission service over the transmission facilities
17 operated by the regional transmission organization,
18 provided, however, that a reasonable transition
19 mechanism or period may be used before eliminating
20 such rates;

21 “(3) minimize the shifting of costs among exist-
22 ing customers of the transmitting utilities within the
23 regional transmission organization;

24 “(4) encourage the efficient and reliable oper-
25 ation of the transmission grid and supply of trans-

1 mission services through congestion management,
2 performance-based or incentive ratemaking, and
3 other measures; and

4 “(5) encourage efficient and adequate invest-
5 ment in and expansion of the transmission facilities
6 owned or controlled by the regional transmission or-
7 ganization.

8 “(e) NEGOTIATED RATES.—Notwithstanding sub-
9 section (a) of this section, the Commission may permit the
10 charging of negotiated rates for transmission services
11 without regard to costs whenever an individual company
12 or companies are willing to pay such negotiated rates, pro-
13 vided, however, that such costs shall not be recovered from
14 other transmission customers.

15 “(f) EFFECTIVE COMPETITION.—Notwithstanding
16 subsection (a) of this section, in reviewing rates, charges,
17 terms, and conditions for transmission rates under this
18 Act, the Commission may permit the recovery of market-
19 based rates for transmission services where it finds that
20 relevant geographic and product markets for transmission
21 services or for delivered wholesale power are subject to ef-
22 fective competition.

23 “(g) RULEMAKING.—Within 180 days after enact-
24 ment of this section, the Commission shall establish by
25 rule definitions and standards to govern its approval of

1 performance-based or incentive pricing policies under sub-
2 section (d) and negotiated rates under subsection (e).
3 With respect to performance-based or incentive rates, the
4 definitions and standards shall include, but not be limited
5 to, (1) a method for calculating initial transmission rates
6 (including price caps that would include discounting); (2)
7 an index mechanism for adjusting initial rates; (3) time
8 periods for redetermining initial rates; and (4) costs to
9 be excluded from performance-based rates.

10 “(h) REPORT.—Within 360 days after enactment of
11 the section, the Commission shall submit to Congress a
12 report on all policies adopted by the Commission to en-
13 courage the economic use and expansion of the trans-
14 mission network through incentive rates or other similar
15 market-oriented approaches.

16 “(i) ANNUAL REPORTS.—The Commission shall sub-
17 mit annually a report to the Congress comparing the al-
18 lowed financial returns on transmission related investment
19 by electric utilities to the financial returns earned by a
20 sample of United States companies from other industrial
21 sectors.”.

22 **SEC. 106. CONFORMING AMENDMENTS.**

23 (a) ENFORCEMENT.—Subsections (a) and (b) of sec-
24 tion 316A of the Federal Power Act (16 U.S.C. 791a) are
25 each amended by striking “section 211, 212, 213, or

1 214,” in each place such phrase appears and inserting
2 “part II”.

3 (b) COMPLAINTS.—Section 306 of the Federal Power
4 Act is amended by inserting “agency or instrumentality
5 of the United States,” after “person,” in the first sentence
6 and by inserting “, electric utility, transmitting utility”
7 after “licensee” in each place it appears.

8 (c) REVIEW OF COMMISSION ORDERS.—Section 313
9 of the Federal Power Act is amended by inserting “agency
10 or instrumentality of the United States,” after “person,”
11 in the first sentence in subsection (a).

12 (d) TECHNICAL CORRECTIONS.—(1) Section 211(c)
13 of the Federal Power Act is amended by striking “(2)”
14 and by redesignating subparagraphs (A) and (B) as para-
15 graphs (1) and (2) and by striking “termination of modi-
16 fication” and inserting “termination or modification”.

17 (2) Section 315 of the Federal Power Act is amended
18 by striking “subsection” and inserting “section”.

19 **SEC. 107. SAVINGS CLAUSE.**

20 (a) STATE AUTHORITY TO ORDER RETAIL AC-
21 CESS.—Neither silence on the part of Congress nor any
22 Act of Congress shall be construed to preclude a State
23 or State commission, acting under authority of State law,
24 from requiring an electric utility subject to its jurisdiction

1 to provide unbundled local distribution service to any elec-
2 tric consumers within such State.

3 (b) EXISTING STATE PROGRAMS.—Nothing in this
4 Act nor any amendment to the Federal Power Act made
5 by this Act preempts, overrides, or requires any change
6 in the terms of any State retail access plan enacted, adopt-
7 ed, approved, promulgated or ordered prior to or within
8 three years after the date of the enactment of this Act
9 to the extent that such plan addresses matters within the
10 jurisdiction of the State prior to the enactment of this Act.

11 **TITLE II—ELECTRIC** 12 **RELIABILITY**

13 **SEC. 201. ELECTRIC RELIABILITY.**

14 Part II of the Federal Power Act (16 U.S.C. 824 and
15 following) is amended by adding at the end the following
16 section:

17 **“SEC. 218. ELECTRIC RELIABILITY ORGANIZATION AND** 18 **OVERSIGHT.**

19 “(a) DEFINITIONS.—As used in this section:

20 “(1) AFFILIATED REGIONAL RELIABILITY EN-
21 TITY.—The term ‘affiliated regional reliability entity’
22 means an entity delegated authority under the provi-
23 sions of subsection (h).

24 “(2) BULK-POWER SYSTEM.—The term ‘bulk-
25 power system’ means all facilities and control sys-

1 tems necessary for operating an interconnected
2 transmission grid (or any portion thereof), including
3 high-voltage transmission lines, substations, control
4 centers, communications, data, and operations plan-
5 ning facilities, and the output of generating units
6 necessary to maintain transmission system reliabil-
7 ity.

8 “(3) ELECTRIC RELIABILITY ORGANIZATION.—
9 The term ‘electric reliability organization’ means the
10 organization approved by the Commission under
11 subsection (d)(4).

12 “(4) ENTITY RULE.—The term ‘entity rule’
13 means a rule adopted by an affiliated regional reli-
14 ability entity for a specific region and designed to
15 implement or enforce one or more organization
16 standards. An entity rule shall be subject to ap-
17 proval by the electric reliability organization and
18 once approved, shall be treated as an organization
19 standard.

20 “(5) INDUSTRY SECTOR.—The term ‘industry
21 sector’ means a group of users of the bulk-power
22 system with substantially similar commercial inter-
23 ests, as determined by the board of the electric reli-
24 ability organization.

1 “(6) INTERCONNECTION.—The term ‘inter-
2 connection’ means a geographic area in which the
3 operation of bulk-power system components is syn-
4 chronized such that the failure of one or more of
5 such components may adversely affect the ability of
6 the operators of other components within the inter-
7 connection to maintain safe and reliable operation of
8 the facilities within their control.

9 “(7) ORGANIZATION STANDARD.—The term ‘or-
10 ganization standard’ means a policy or standard
11 duly adopted by the electric reliability organization
12 to provide for the reliable operation of a bulk-power
13 system.

14 “(8) PUBLIC INTEREST GROUP.—The term
15 ‘public interest group’ means any nonprofit private
16 or public organization that has an interest in the ac-
17 tivities of the electric reliability organization, includ-
18 ing, but not limited to, ratepayer advocates, environ-
19 mental groups, and State and local government or-
20 ganizations that regulate market participants and
21 promulgate government policy.

22 “(9) SYSTEM OPERATOR.—The term ‘system
23 operator’ means any entity that operates or is re-
24 sponsible for the operation of a bulk-power system,
25 including a control area operator, an independent

1 system operator, a transmission company, a trans-
2 mission system operator, or a regional security coor-
3 dinator.

4 “(10) USER OF THE BULK-POWER SYSTEM.—
5 The term ‘user of the bulk-power system’ means any
6 entity that sells, purchases, or transmits electric en-
7 ergy over a bulk-power system, or that owns, oper-
8 ates or maintains facilities or control systems that
9 are part of a bulk-power system, or that is a system
10 operator.

11 “(11) VARIANCE.—The term ‘variance’ means
12 an exception or variance from the requirements of
13 an organization standard (including a proposal for
14 an organization standard where there is no organiza-
15 tion standard) that is adopted by an affiliated re-
16 gional reliability entity and applicable to all or a
17 part of the region for which the affiliated regional
18 reliability entity is responsible. A variance shall be
19 subject to approval by the electric reliability organi-
20 zation and once approved, shall be treated as an or-
21 ganization standard.

22 “(b) COMMISSION AUTHORITY.—(1) Notwithstanding
23 section 201(f), the Commission shall have jurisdiction
24 within the United States over the electric reliability orga-
25 nization, all affiliated regional reliability entities, all sys-

1 tem operators, and all users of the bulk-power system, for
2 purposes of approving and enforcing compliance with the
3 requirements of this section.

4 “(2) The Commission may, by rule, define any other
5 term used in this section, provided such definition is con-
6 sistent with the definitions in, and the purpose and intent
7 of, this Act.

8 “(c) EXISTING RELIABILITY STANDARDS.—Follow-
9 ing enactment of this section, and prior to the approval
10 of the electric reliability organization under subsection (d),
11 any person, including the North American Electric Reli-
12 ability Council and its member regional reliability councils,
13 shall file with the Commission any reliability standard,
14 guidance or practice, or any amendment thereto, that the
15 person would propose to be made mandatory and enforce-
16 able. The Commission, after allowing interested persons
17 an opportunity to submit comments, may approve any
18 such proposed mandatory standard, guidance or practice,
19 or any amendment thereto, if it finds that the standard,
20 guidance, or practice, or amendment is just, reasonable,
21 not unduly discriminatory or preferential, and in the pub-
22 lic interest. Filed standards, guidances, or practices, in-
23 cluding any amendments thereto, shall be mandatory and
24 applicable according to their terms following approval by
25 the Commission and shall remain in effect until—

1 (1) withdrawn, disapproved or superseded by an
2 organization standard, issued or approved by the
3 electric reliability organization and made effective by
4 the Commission under subsection (e); or

5 (2) disapproved or suspended by the Commis-
6 sion if, upon complaint or upon its own motion and
7 after notice and opportunity for comment, the Com-
8 mission finds the standard, guidance or practice un-
9 just, unreasonable, unduly discriminatory or pref-
10 erential, or not in the public interest.

11 Standards, guidances or practices in effect pursuant to the
12 provisions of this subsection shall be enforceable by the
13 Commission.

14 “(d) ORGANIZATION APPROVAL.—(1) Not later than
15 90 days after the date of enactment of this section, the
16 Commission shall issue proposed rules specifying proce-
17 dures and requirements for an entity to apply for approval
18 as the electric reliability organization. The Commission
19 shall provide notice and opportunity for comment on the
20 proposed rules. The Commission shall promulgate a final
21 rule under this subsection within 180 days after the date
22 of enactment of this section.

23 “(2) Following the issuance of a final Commission
24 rule under paragraph (1), an entity may submit an appli-
25 cation to the Commission for approval as the electric reli-

1 ability organization. The applicant shall specify in its ap-
2 plication its governance and procedures, as well as its
3 funding mechanism and initial funding requirements.

4 “(3) The Commission shall provide public notice of
5 the application and afford interested parties an oppor-
6 tunity to comment.

7 “(4) The Commission shall approve the application
8 if the Commission determines that the applicant—

9 “(A) has the ability to develop, implement and
10 enforce standards that provide for an adequate level
11 of reliability of the bulk-power system;

12 “(B) permits voluntary membership to any user
13 of the bulk-power system or public interest group;

14 “(C) assures fair representation of its members
15 in the selection of its directors and fair management
16 of its affairs, taking into account the need for effi-
17 ciency and effectiveness in decisionmaking and oper-
18 ations and the requirements for technical com-
19 petency in the development of organization stand-
20 ards and the exercise of oversight of bulk-power sys-
21 tem reliability;

22 “(D) assures that no two industry sectors have
23 the ability to control, and no one industry sector has
24 the ability to veto, the electric reliability organiza-
25 tion’s discharge of its responsibilities (including ac-

1 tions by committees recommending standards to the
2 board or other board actions to implement and en-
3 force standards);

4 “(E) provides for governance by a board wholly
5 comprised of independent directors;

6 “(F) provides a funding mechanism and re-
7 quirements that are just, reasonable and not unduly
8 discriminatory or preferential and are in the public
9 interest, and which satisfy the requirements of sub-
10 section (l);

11 “(G) establishes procedures for development of
12 organization standards that provide reasonable no-
13 tice and opportunity for public comment, taking into
14 account the need for efficiency and effectiveness in
15 decisionmaking and operations and the requirements
16 for technical competency in the development of orga-
17 nization standards, and which standards develop-
18 ment process has the following attributes:

19 “(i) openness,

20 “(ii) balance of interests, and

21 “(iii) due process, except that the proce-
22 dures may include alternative procedures for
23 emergencies;

24 “(H) establishes fair and impartial procedures
25 for implementation and enforcement of organization

1 standards, either directly or through delegation to
2 an affiliated regional reliability entity, including the
3 imposition of penalties, limitations on activities,
4 functions, or operations, or other appropriate sanc-
5 tions;

6 “(I) establishes procedures for notice and op-
7 portunity for public observation of all meetings, ex-
8 cept that the procedures for public observation may
9 include alternative procedures for emergencies or for
10 the discussion of information the directors reason-
11 ably determine should take place in closed session,
12 such as litigation, personnel actions, or commercially
13 sensitive information;

14 “(J) provides for the consideration of rec-
15 ommendations of States and State commissions; and

16 “(K) addresses other matters that the Commis-
17 sion may deem necessary or appropriate to ensure
18 that the procedures, governance, and funding of the
19 electric reliability organization are just, reasonable,
20 not unduly discriminatory or preferential, and are in
21 the public interest.

22 “(5) The Commission shall approve only one electric
23 reliability organization. If the Commission receives two or
24 more timely applications that satisfy the requirements of
25 this subsection, the Commission shall approve only the ap-

1 plication it concludes will best implement the provisions
2 of this section.

3 “(e) ESTABLISHMENT OF AND MODIFICATIONS TO
4 ORGANIZATION STANDARDS.—(1) The electric reliability
5 organization shall file with the Commission any new or
6 modified organization standards, including any variances
7 or entity rules, and the Commission shall follow the proce-
8 dures under paragraph (2) for review of that filing.

9 “(2) Submissions under paragraph (1) shall include:

10 “(A) a concise statement of the purpose of the
11 proposal, and

12 “(B) a record of any proceedings conducted
13 with respect to such proposal.

14 The Commission shall provide notice of the filing of such
15 proposal and afford interested persons 30 days to submit
16 comments. The Commission, after taking into consider-
17 ation any submitted comments, shall approve or dis-
18 approve such proposal not later than 60 days after the
19 deadline for the submission of comments, except that the
20 Commission may extend the 60-day period for an addi-
21 tional 90 days for good cause, and except further that if
22 the Commission does not act to approve or disapprove a
23 proposal within the foregoing periods the proposal shall
24 go into effect subject to its terms, without prejudice to
25 the authority of the Commission thereafter to suspend or

1 modify the proposal in accordance with the standards and
2 requirements of this section. Proposals approved by the
3 Commission shall take effect according to their terms but
4 not earlier than 30 days after the effective date of the
5 Commission's order, except as provided in paragraph (3)
6 of this subsection.

7 “(3)(A) In the exercise of its review responsibilities
8 under this subsection, the Commission shall give due
9 weight to the technical expertise of the electric reliability
10 organization with respect to the content of a new or modi-
11 fied organization standard, but shall not defer to the orga-
12 nization with respect to the effect of the organization
13 standard on competition. The Commission shall approve
14 a proposed new or modified organization standard if it de-
15 termines the standard to be just, reasonable, not unduly
16 discriminatory or preferential, and in the public interest.
17 The Commission, either upon complaint or upon its own
18 motion, shall suspend an organization standard, if it de-
19 termines the standard to be unjust, unreasonable, unduly
20 discriminatory or preferential or not in the public interest.
21 Upon suspension of such a standard, the Commission shall
22 establish an interim standard to apply until a new or
23 modified standard is approved.

24 “(B) An existing or proposed organization standard
25 which is disapproved or suspended in whole or in part by

1 the Commission shall be remanded to the electric reliabil-
2 ity organization for further consideration.

3 “(C) The Commission, on its own motion or upon
4 complaint, may direct the electric reliability organization
5 to develop an organization standard, including modifica-
6 tion to an existing organization standard, addressing a
7 specific matter by a date certain if the Commission consid-
8 ers such new or modified organization standard necessary
9 or appropriate to further the purposes of this section. The
10 electric reliability organization shall file any such new or
11 modified organization standard in accordance with this
12 subsection.

13 “(D) An affiliated regional reliability entity may pro-
14 pose a variance or entity rule under subsection (h)(3) to
15 the electric reliability organization. The affiliated regional
16 reliability entity may request that the electric reliability
17 organization expedite consideration of the proposal, and
18 shall file a notice of such request with the Commission,
19 if expedited consideration is necessary to provide for bulk-
20 power system reliability. If the electric reliability organiza-
21 tion fails to adopt the variance or entity rule, either in
22 whole or in part, the affiliated regional reliability entity
23 may request that the Commission review such action. If
24 the Commission determines, after its review of such a re-
25 quest, that the action of the electric reliability organiza-

1 tion did not conform to the applicable standards and pro-
2 cedures approved by the Commission, or if the Commis-
3 sion determines that the variance or entity rule is just,
4 reasonable, not unduly discriminatory or preferential, and
5 in the public interest, and that the electric reliability orga-
6 nization has unreasonably rejected the proposed variance
7 or entity rule, then the Commission may remand the pro-
8 posed variance or entity rule for further consideration by
9 the electric reliability organization or may direct the elec-
10 tric reliability organization or the affiliated regional reli-
11 ability entity to develop a variance or entity rule consistent
12 with that requested by the affiliated regional reliability en-
13 tity. Any such variance or entity rule proposed by an affili-
14 ated regional reliability entity shall be submitted to the
15 electric reliability organization for review and filing with
16 the Commission in accordance with the procedures speci-
17 fied in this subsection.

18 “(E) Notwithstanding any other provision of this sub-
19 section, a proposed organization standard or amendment
20 shall take effect according to its terms if the electric reli-
21 ability organization determines that an emergency exists
22 requiring that such proposed organization standard or
23 amendment take effect without notice or comment. The
24 electric reliability organization shall notify the Commission
25 immediately following such determination and shall file

1 such emergency organization standard or amendment with
2 the Commission not later than five days following such
3 determination and shall include in such filing an expla-
4 nation of the need for such emergency standard. Subse-
5 quently, the Commission shall provide notice of the organi-
6 zation standard or amendment for comment, and shall fol-
7 low the procedures set out in paragraphs (2) and (3) for
8 review of the new or modified organization standard. Any
9 such emergency organization standard that has gone into
10 effect shall remain in effect unless and until suspended
11 or disapproved by the Commission. If the Commission de-
12 termines at any time that the emergency organization
13 standard or amendment is not necessary, the Commission
14 may suspend such emergency organization standard or
15 amendment.

16 “(4) All users of the bulk-power system shall comply
17 with any organization standard that takes effect under
18 this section.

19 “(f) COORDINATION WITH CANADA AND MEXICO.—
20 The electric reliability organization shall take all appro-
21 priate steps to gain recognition in Canada and Mexico.
22 The United States shall use its best efforts to enter into
23 international agreements with the appropriate govern-
24 ments of Canada and Mexico to provide for effective com-
25 pliance with organization standards and to provide for the

1 effectiveness of the electric reliability organization in car-
2 rying out its mission and responsibilities. All actions taken
3 by the electric reliability organization, any affiliated re-
4 gional reliability entity, and the Commission shall be con-
5 sistent with the provisions of such international agree-
6 ments.

7 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR
8 FUNDING.—(1) The electric reliability organization shall
9 file with the Commission any proposed change in its proce-
10 dures, governance, or funding, or any changes in the affili-
11 ated regional reliability entity’s procedures, governance or
12 funding relating to delegated functions, and shall include
13 with the filing an explanation of the basis and purpose
14 for the change.

15 “(2) A proposed procedural change shall take effect
16 90 days after filing with the Commission if the change
17 constitutes a statement of policy, practice, or interpreta-
18 tion with respect to the meaning or enforcement of an ex-
19 isting procedure. Any other proposed procedural change
20 shall take effect only upon a finding by the Commission,
21 after notice and opportunity for comments, that the
22 change is just, reasonable, not unduly discriminatory or
23 preferential, is in the public interest, and satisfies the re-
24 quirements of subsection (d)(4).

1 “(3) A proposed change in governance or funding
2 shall not take effect unless the Commission finds that the
3 change is just, reasonable, not unduly discriminatory or
4 preferential, and is in the public interest, and satisfies the
5 requirements of subsection (d)(4).

6 “(4)(A) The Commission, either upon complaint or
7 upon its own motion, may suspend a procedure or govern-
8 ance or funding provision if it determines the procedure
9 or provision does not meet the requirements of subsection
10 (d)(4) or is unjust, unreasonable, unduly discriminatory
11 or preferential, or otherwise not in the public interest.
12 Upon such suspension the Commission shall establish an
13 interim procedure or governance or funding provision until
14 a new or modified procedure or governance or funding pro-
15 vision meeting the requirements of this subsection takes
16 effect.

17 “(B) The Commission, upon complaint or upon its
18 own motion, may require the electric reliability organiza-
19 tion to amend the procedures, governance or funding if
20 the Commission determines that the amendment is nec-
21 essary to meet the requirements of this section. The elec-
22 tric reliability organization shall file the amendment in ac-
23 cordance with paragraph (1) of this subsection.

24 “(h) DELEGATIONS OF AUTHORITY.—(1) The elec-
25 tric reliability organization shall, upon request by an en-

1 tity, enter into an agreement with such entity for the dele-
2 gation of authority to implement and enforce compliance
3 with organization standards in a specified geographic area
4 if the electric reliability organization finds that the entity
5 requesting the delegation satisfies the requirements of
6 subsection (d)(4) (A), (B), (C), (D), (F), and (K), and
7 if the delegation promotes the effective and efficient imple-
8 mentation and administration of bulk-power system reli-
9 ability. The electric reliability organization may enter into
10 an agreement to delegate to the entity any other authority,
11 except that the electric reliability organization shall re-
12 serve the right to set and approve organization standards
13 for bulk-power system reliability. For purposes of this sub-
14 section, the New York State Reliability Council shall be
15 deemed to satisfy the requirements of this paragraph.

16 “(2) The electric reliability organization shall file
17 with the Commission any agreement entered into under
18 this subsection and any information the Commission re-
19 quires with respect to the affiliated regional reliability en-
20 tity to which authority is to be delegated. The Commission
21 shall approve the agreement, following public notice and
22 opportunity for comment, if it finds that the agreement
23 meets the requirements of paragraph (1), and is just, rea-
24 sonable, not unduly discriminatory or preferential, and is
25 in the public interest. A proposed delegation agreement

1 with an affiliated regional reliability entity organized on
2 an interconnection-wide basis shall be rebuttably pre-
3 sumed by the Commission to promote the effective and
4 efficient implementation and administration of bulk-power
5 system reliability. No delegation by the electric reliability
6 organization shall be valid unless approved by the Com-
7 mission.

8 “(3)(A) A delegation agreement entered into under
9 this subsection shall specify the procedures for an affili-
10 ated regional reliability entity to propose entity rules or
11 variances for review by the electric reliability organization.
12 With respect to any such proposal that would apply on
13 an interconnection-wide basis, the electric reliability orga-
14 nization shall presume such proposal valid if made by an
15 interconnection-wide affiliated regional reliability entity
16 unless the electric reliability organization makes a written
17 finding that the proposal—

18 “(i) was not developed in a fair and open proc-
19 ess that provided an opportunity for all interested
20 parties to participate;

21 “(ii) has a significant adverse impact on reli-
22 ability or interstate commerce in other interconnec-
23 tions;

24 “(iii) fails to provide a level of bulk-power sys-
25 tem reliability within the interconnection such that

1 it would constitute a serious and substantial threat
2 to public health, safety, welfare, or national security;
3 or

4 “(iv) creates a serious and substantial burden
5 on competitive markets within the interconnection
6 that is not necessary for reliability.

7 “(B) With respect to any such proposal that would
8 apply only to part of an interconnection, the electric reli-
9 ability organization shall find such proposal valid if the
10 affiliated regional reliability entity or entities making the
11 proposal demonstrate that it—

12 “(i) was developed in a fair and open process
13 that provided an opportunity for all interested par-
14 ties to participate;

15 “(ii) would not have an adverse impact on
16 interstate commerce that is not necessary for reli-
17 ability;

18 “(iii) provides a level of bulk-power system reli-
19 ability adequate to protect public health, safety, wel-
20 fare, and national security, and would not have a
21 significant adverse impact on reliability; and

22 “(iv) in the case of a variance, is based on le-
23 gitimate differences between regions or between sub-
24 regions within the affiliated regional reliability enti-
25 ty’s geographic area.

1 The electric reliability organization shall approve or dis-
2 approve such proposal within 120 days, or the proposal
3 shall be deemed approved. Following approval of any such
4 proposal under this paragraph, the electric reliability orga-
5 nization shall seek Commission approval pursuant to sub-
6 section (e)(3). Affiliated regional reliability entities may
7 not make requests for approval directly to the Commission
8 except pursuant to subsection (e)(3)(D).

9 “(4) If an affiliated regional reliability entity re-
10 quests, consistent with paragraph (1), that the electric re-
11 liability organization delegate authority to it, but is unable
12 within 180 days to reach agreement with the electric reli-
13 ability organization with respect to such requested delega-
14 tion, such entity may seek relief from the Commission. If,
15 following notice and opportunity for comment, the Com-
16 mission determines that a delegation to the entity would
17 meet the requirements of subsection (1) above, and that
18 the delegation would be just, reasonable, not unduly dis-
19 criminatory or preferential, and in the public interest, and
20 that the electric reliability organization has unreasonably
21 withheld such delegation, the Commission may, by order,
22 direct the electric reliability organization to make such del-
23 egation.

24 “(5)(A) The Commission may, upon its own motion
25 or upon complaint, and with notice to the appropriate af-

1 affiliated regional reliability entity or entities, direct the
2 electric reliability organization to propose a modification
3 to an agreement entered into under this subsection if the
4 Commission determines that—

5 “(i) the affiliated regional reliability entity no
6 longer has the capacity to carry out effectively or ef-
7 ficiently its implementation or enforcement respon-
8 sibilities under that agreement, has failed to meet its
9 obligations under that agreement, or has violated
10 any provision of this section,

11 “(ii) the rules, practices, or procedures of the
12 affiliated regional reliability entity no longer provide
13 for fair and impartial discharge of its implementa-
14 tion or enforcement responsibilities under the agree-
15 ment,

16 “(iii) the geographic boundary of a regional
17 transmission organization approved by the Commis-
18 sion is not wholly within the boundary of an affili-
19 ated regional reliability entity and such difference is
20 inconsistent with the effective and efficient imple-
21 mentation and administration of bulk-power system
22 reliability, or

23 “(iv) the agreement is inconsistent with another
24 delegation agreement as a result of actions taken
25 under paragraph (4) of this subsection.

1 “(B) Following an order of the Commission issued
2 under subparagraph (A), the Commission may suspend
3 the affected agreement if the electric reliability organiza-
4 tion or the affiliated regional reliability entity does not
5 propose an appropriate and timely modification. If the
6 agreement is suspended, the electric reliability organiza-
7 tion shall assume the previously delegated responsibilities.
8 The Commission shall allow the electric reliability organi-
9 zation and the affiliated regional reliability entity an op-
10 portunity to appeal the suspension. Any such appeal shall
11 not stay the suspension unless directed by the Commission
12 or a reviewing court.

13 “(i) ORGANIZATION MEMBERSHIP.—Every system
14 operator shall be required to be a member of the electric
15 reliability organization and shall be required also to be a
16 member of any affiliated regional reliability entity operat-
17 ing under an agreement effective pursuant to subsection
18 (h) applicable to the region in which the system operator
19 operates or is responsible for operation of bulk-power sys-
20 tem facilities.

21 “(j) INJUNCTIONS AND DISCIPLINARY ACTION.—(1)
22 Consistent with the range of actions approved by the Com-
23 mission under subsection (d)(4)(H), the electric reliability
24 organization may impose a penalty, limit activities, func-
25 tions, or operations, or take such other disciplinary actions

1 the electric reliability organization finds appropriate
2 against a user of the bulk-power system if the electric reli-
3 ability organization, after notice and opportunity for inter-
4 ested parties to be heard, issues a finding in writing that
5 the user of the bulk-power system has violated an organi-
6 zation standard approved by the Commission. The electric
7 reliability organization shall immediately notify the Com-
8 mission of any disciplinary action imposed with respect to
9 an act or failure to act of a user of the bulk-power system
10 that affected or threatened to affect bulk-power system fa-
11 cilities located in the United States. The sanctioned party
12 shall have the right to seek suspension, modification, or
13 rescission of such disciplinary action by the Commission.
14 If the electric reliability organization finds it necessary to
15 prevent a serious threat to reliability, the organization
16 may seek injunctive relief in the United States district
17 court for the district in which the affected facilities are
18 located.

19 “(2) A disciplinary action taken under paragraph (1)
20 may take effect no earlier than 30 days after the electric
21 reliability organization files with the Commission its writ-
22 ten finding and record of proceedings before the electric
23 reliability organization and the Commission posts the or-
24 ganization’s written finding, unless the Commission, on its
25 own motion or upon petition by the user of the bulk-power

1 system which is the subject of the action, suspends the
2 action. The action shall remain in effect or remain sus-
3 pended until the Commission, after notice and opportunity
4 for hearing, affirms, sets aside, modifies, or reinstates the
5 action, but the Commission shall conduct such hearing
6 under procedures established to ensure expedited consider-
7 ation of the action taken.

8 “(3) The Commission, on its own motion or upon
9 complaint of any person, may order compliance with an
10 organization standard and may impose a penalty, limit ac-
11 tivities, functions, or operations, or take such other dis-
12 ciplinary action as the Commission finds appropriate,
13 against a user of the bulk-power system with respect to
14 actions affecting or threatening to affect bulk-power sys-
15 tem facilities located in the United States if the Commis-
16 sion finds, after notice and opportunity for a hearing, that
17 the user of the bulk-power system has violated or threat-
18 ens to violate an organization standard.

19 “(4) The Commission may take such action as is nec-
20 essary against the electric reliability organization or an af-
21 filiated regional reliability entity to assure compliance with
22 an organization standard, or any Commission order affect-
23 ing the electric reliability organization or an affiliated re-
24 gional reliability entity.

1 “(k) RELIABILITY REPORTS.—The electric reliability
2 organization shall conduct periodic assessments of the reli-
3 ability and adequacy of the interconnected bulk-power sys-
4 tem in North America and shall report annually to the
5 Secretary of Energy and the Commission its findings and
6 recommendations for monitoring or improving system reli-
7 ability and adequacy.

8 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
9 COSTS.—The reasonable costs of the electric reliability or-
10 ganization, and the reasonable costs of each affiliated re-
11 gional reliability entity that are related to implementation
12 and enforcement of organization standards or other re-
13 quirements contained in a delegation agreement approved
14 under subsection (h), shall be assessed by the electric reli-
15 ability organization and each affiliated regional reliability
16 entity, respectively, taking into account the relationship of
17 costs to each region and based on an allocation that re-
18 flects an equitable sharing of the costs among all end-
19 users. The Commission shall provide by rule for the review
20 of such costs and allocations, pursuant to the standards
21 in this subsection and subsection (d)(4)(F).

22 “(m) APPLICATION OF ANTITRUST LAWS.—

23 “(1) IN GENERAL.—To the extent undertaken
24 to develop, or implement, or enforce an organization
25 standard, each of the following activities shall not, in

1 any action under the antitrust laws, be deemed ille-
2 gal per se:

3 “(A) Activities undertaken by the electric
4 reliability organization under this section or af-
5 filiated regional reliability entity operating
6 under an agreement in effect under subsection
7 (h).

8 “(B) Activities of a member of the electric
9 reliability organization or affiliated regional re-
10 liability entity in pursuit of organization objec-
11 tives under this section undertaken in good
12 faith under the rules of the organization.

13 Primary jurisdiction, and immunities and other af-
14 firmative defenses, shall be available to the extent
15 otherwise applicable.

16 “(2) RULE OF REASON.—In any action under
17 the antitrust laws, an activity described in para-
18 graph (1) shall be judged on the basis of its reason-
19 ableness, taking into account all relevant factors af-
20 fecting competition and reliability.

21 “(3) DEFINITION.—For purposes of this sub-
22 section, the term ‘antitrust laws’ has the meaning
23 given such term in subsection (a) of the first section
24 of the Clayton Act (15 U.S.C. 12(a)), except that
25 such term includes section 5 of the Federal Trade

1 Commission Act (15 U.S.C. 45) to the extent that
2 such section 5 applies to unfair methods of competi-
3 tion.

4 “(n) SAVINGS CLAUSE.—Nothing in this section shall
5 be construed to preempt the authority of a State or a po-
6 litical subdivision of a State to ensure the reliability of
7 local distribution facilities within the State except where
8 the exercise of such authority unreasonably impairs the
9 reliability of the bulk-power system.

10 “(o) REGIONAL ADVISORY BODIES.—The Commis-
11 sion shall establish a regional advisory body on the petition
12 of two-thirds of the Governors of a region. A regional advi-
13 sory body shall be composed of one member from each
14 participating State in the region, appointed by the Gov-
15 ernor of each State, and may include representatives of
16 agencies, States, and provinces outside the United States,
17 upon execution of an international agreement or agree-
18 ments described in subsection (f). A regional advisory body
19 may provide recommendations to the electric reliability or-
20 ganization, an affiliated regional reliability entity, or the
21 Commission regarding the governance of an existing or
22 proposed affiliated regional reliability entity within the
23 same region, whether an organization standard, entity
24 rule, or variance proposed to apply within the region is
25 just, reasonable, not unduly discriminatory or preferential,

1 and in the public interest, and whether fees proposed to
2 be assessed within the region are just, reasonable, not un-
3 duly discriminatory or preferential, in the public interest,
4 and consistent with the requirements of subsection (l).
5 The Commission may give deference to the recommenda-
6 tions of any such regional advisory body if that body is
7 organized on an interconnection-wide basis.”.

8 **TITLE III—CONSUMER** 9 **PROTECTION**

10 **SEC. 301. ELECTRIC SUPPLIER INFORMATION DISCLOSURE.**

11 (a) DISCLOSURE RULES.—Not later than January 1,
12 2001, the Federal Trade Commission shall promulgate
13 rules prescribing the form, placement, content, and timing
14 of the disclosure required under subsections (b) and (c)
15 of this section. Such rules shall be promulgated in accord-
16 ance with section 553 of title 5 of the United States Code,
17 after consultation with the Federal Energy Regulatory
18 Commission, the Secretary of Energy, and the Adminis-
19 trator of the Environmental Protection Agency.

20 (b) DISCLOSURE TO RETAIL ELECTRIC CONSUM-
21 ERS.—In order to assist retail electric consumers in mak-
22 ing informed purchasing decisions, any retail electric sup-
23 plier that sells or makes an offer to sell electric energy,
24 or solicits retail electric consumers to purchase electric en-
25 ergy, shall provide the retail electric consumers, in accord-

1 ance with rules promulgated under subsection (a), a state-
2 ment containing the following information:

3 (1)(A) The nature of the service being offered,
4 including information about interruptibility of serv-
5 ice.

6 (B) The price of electric energy, including a de-
7 scription of any variable charges.

8 (C) A description of all other charges that are
9 associated with the service being offered including,
10 but not limited to, access charges, exit charges,
11 back-up service charges, stranded cost recovery
12 charges, and customer service charges.

13 (D) Information concerning the product or
14 price that the Federal Trade Commission determines
15 is technologically and economically feasible to pro-
16 vide and is of assistance to retail electric consumers
17 in making purchasing decisions.

18 (2) Information concerning the share of electric
19 energy that is generated by each type of electric gen-
20 eration resource and generation emissions character-
21 istics that the Federal Trade Commission deter-
22 mines is technologically and economically feasible to
23 provide and is of assistance to retail electric consum-
24 ers in making purchasing decisions.

1 (c) DISCLOSURE TO WHOLESALE PURCHASERS.—In
2 every sale of electric energy for resale, the seller shall pro-
3 vide to the purchaser such information respecting genera-
4 tion source and emissions characteristics as may be re-
5 quired by rules under subsection (a).

6 (d) FEDERAL TRADE COMMISSION ENFORCE-
7 MENT.—Violation of a rule promulgated under this section
8 shall be treated as a violation of a rule under section 18
9 of the Federal Trade Commission Act (15 U.S.C. 57a).
10 All functions and powers of the Federal Trade Commis-
11 sion under such Act are available to the Federal Trade
12 Commission to enforce compliance with this section not-
13 withstanding any jurisdictional limitations in such Act.

14 (e) STATE AUTHORITY.—(1) This section does not
15 preclude a State or State commission from prescribing and
16 enforcing additional laws, regulations, or procedures re-
17 garding the practices which are the subject of this section,
18 so long as such laws, regulations, or procedures are not
19 inconsistent with the provisions of this section or with any
20 rule prescribed by the Federal Trade Commission pursu-
21 ant to it.

22 (2) The remedies provided by this section are in addi-
23 tion to any other remedies available by law.

1 **SEC. 302. CONSUMER PRIVACY.**

2 (a) PROHIBITION.—The Federal Trade Commission
3 shall promulgate rules prohibiting any person who obtains
4 consumer information in connection with the sale or deliv-
5 ery of electric energy to a retail electric consumer from
6 using, disclosing, or permitting access to such information
7 unless the consumer to whom such information relates
8 provides prior written approval. Such rules shall be pro-
9 mulgated in accordance with section 553 of title 5 of the
10 United States Code.

11 (b) PERMITTED USE.—The rules under subsection
12 (a) shall not prohibit any person from using, disclosing,
13 or permitting access to consumer information referred to
14 in subsection (a) for any of the following purposes:

15 (1) To facilitate a retail electric consumer's
16 change in selection of a retail electric supplier under
17 procedures approved by the State or State commis-
18 sion.

19 (2) To initiate, render, bill, or collect for the
20 sale or delivery of electric energy to retail electric
21 consumers or for related services.

22 (3) To protect the rights or property of the per-
23 son obtaining such information.

24 (4) To protect retail electric consumers from
25 fraud, abuse, and unlawful subscription in the sale
26 or delivery of electric energy to such consumers.

1 (5) For law enforcement purposes.

2 (6) For purposes of compliance with any Fed-
3 eral, State, or local law or regulation authorizing
4 disclosure of information to a Federal, State, or
5 local agency.

6 (c) AGGREGATE CONSUMER INFORMATION.—The
7 rules under subsection (a) shall permit any person to use,
8 disclose, and permit access to aggregate consumer infor-
9 mation and shall require local distribution companies to
10 make such information available to retail electric suppliers
11 upon request and payment of a reasonable fee.

12 (d) FEDERAL TRADE COMMISSION ENFORCE-
13 MENT.—Violation of a rule promulgated under this section
14 shall be treated as a violation of a rule under section 18
15 of the Federal Trade Commission Act (15 U.S.C. 57a).
16 All functions and powers of the Federal Trade Commis-
17 sion under such Act are available to the Federal Trade
18 Commission to enforce compliance with this section not-
19 withstanding any jurisdictional limitations in such Act.

20 (e) STATE AUTHORITY.—(1) This section does not
21 preclude a State or State commission from prescribing and
22 enforcing additional laws, regulations, or procedures re-
23 garding the practices which are the subject of this section,
24 so long as such laws, regulations, or procedures are not
25 inconsistent with the provisions of this section or with any

1 rule prescribed by the Federal Trade Commission pursu-
2 ant to it.

3 (2) The remedies provided by this section are in addi-
4 tion to any other remedies available by law.

5 (f) DEFINITIONS.—As used in this section:

6 (1) AGGREGATE CONSUMER INFORMATION.—

7 The term “aggregate consumer information” means
8 collective data that relates to a group or category of
9 retail electric consumers, from which individual con-
10 sumer identities and characteristics have been re-
11 moved.

12 (2) CONSUMER INFORMATION.—The term “con-
13 sumer information” means information that relates
14 to the quantity, technical configuration, type, des-
15 tination, or amount of use of electric energy deliv-
16 ered to any retail electric consumer.

17 **SEC. 303. ELECTRIC SUPPLY UNFAIR TRADE PRACTICES.**

18 (a) SLAMMING.—(1) The Federal Trade Commission
19 shall promulgate rules in accordance with section 553 of
20 title 5 of the United States Code for the submittal and
21 verification of a retail electric consumer’s selection or
22 change in selection of a retail electric supplier and for the
23 assessment of penalties for violation of these rules.

1 (2) A person shall not submit or change the selection
2 made by a retail electric consumer except in accordance
3 with procedures established in paragraph (1).

4 (b) CRAMMING.—(1) The Federal Trade Commission
5 shall promulgate rules in accordance with section 553 of
6 title 5 of the United States Code for obtaining the consent
7 of a retail electric consumer for purchase of goods and
8 services other than those expressly authorized by law or
9 any agreement for the purchase of electric energy or relat-
10 ed services entered into by the electric consumer and for
11 the assessment of penalties for violation of these rules.

12 (2) A person shall not charge a retail electric con-
13 sumer for a particular good or service except in accordance
14 with procedures established in paragraph (1).

15 (c) FEDERAL TRADE COMMISSION ENFORCEMENT.—
16 Violation of a rule promulgated under this section shall
17 be treated as a violation of a rule under section 18 of the
18 Federal Trade Commission Act (15 U.S.C. 57a). All func-
19 tions and powers of the Federal Trade Commission under
20 such Act are available to the Federal Trade Commission
21 to enforce compliance with this section notwithstanding
22 any jurisdictional limitations in such Act.

23 (d) STATE AUTHORITY.—(1) This section does not
24 preclude a State or State commission from prescribing and
25 enforcing additional laws, regulations, or procedures re-

1 garding the practices which are the subject of this section,
2 so long as such laws, regulations, or procedures are not
3 inconsistent with the provisions of this section or with any
4 rule prescribed by the Federal Trade Commission pursu-
5 ant to it.

6 (2) The remedies provided by this section are in addi-
7 tion to any other remedies available by law.

8 **SEC. 304. UNIVERSAL AND AFFORDABLE SERVICE.**

9 It is the sense of the Congress that—

10 (1) every retail electric consumer should have
11 access to electric energy at reasonable and afford-
12 able rates; and

13 (2) the States should ensure that retail electric
14 competition does not result in the loss of service to
15 rural, residential, or low-income consumers.

16 **SEC. 305. DEFINITIONS.**

17 For purposes of this title, each of the terms “local
18 distribution company”, “retail electric consumer”, “retail
19 electric supplier”, and “State commission” has the mean-
20 ing given such term in section 3 of the Federal Power Act.

21 **TITLE IV—MERGERS**

22 **SEC. 401. ELECTRIC COMPANY MERGERS AND DISPOSITION**
23 **OF PROPERTY.**

24 Section 203(a) of the Federal Power Act (16 U.S.C.
25 824b(a) is amended—

1 (1) by inserting “(1)” after “(a)”;

2 (2) in paragraph (1) (as so designated)—

3 (A) by striking “authorizing it to do so.”

4 and inserting the following: “authorizing it to

5 do so, unless the period specified in paragraph

6 (2) has expired.”; and

7 (B) by striking “After notice” and all that

8 follows; and

9 (3) by adding at the end the following:

10 “(2) After notice and opportunity for hearing, if the

11 Commission finds that the proposed disposition, consolida-

12 tion, acquisition, or control will be consistent with the pub-

13 lic interest, it shall approve the same within 180 days after

14 the date on which the application was filed with the Com-

15 mission.”.

16 **SEC. 402. ELIMINATION OF REVIEW BY THE NUCLEAR REG-**
17 **ULATORY COMMISSION.**

18 Section 105 of the Atomic Energy Act of 1954 (42

19 U.S.C. 2135) is amended by adding the following after

20 subsection c.:

21 “d. Following the date of enactment of this sub-

22 section, subsection 105 c. shall not apply to any pending

23 or future application filed for a license to construct or op-

24 erate a utilization or production facility under sections

25 103 or 104 b. This subsection shall not affect the Commis-

1 sion's authority to enforce conditions included in licenses
2 issued under section/“(C 103 or 104 b. before the date
3 of enactment of this subsection.”.

4 **SEC. 403. ANTITRUST SAVINGS CLAUSE.**

5 This Act and the amendments made by this Act shall
6 not be construed to affect the operation of the antitrust
7 laws. For purposes of this section, the term “antitrust
8 laws” has the meaning given such term in subsection (a)
9 of the first section of the Clayton Act (15 U.S.C. 12(a)),
10 except that such term includes section 5 of the Federal
11 Trade Commission Act (15 U.S.C. 45) to the extent that
12 such section 5 applies to unfair methods of competition.

13 **TITLE V—PROMOTING**
14 **COMPETITION**

15 **Subtitle A—Public Utility Holding**
16 **Company Act of 1935**

17 **SEC. 501. DEFINITIONS.**

18 For purposes of this subtitle:

19 (1) The term “affiliate” of a company means
20 any company 5 percent or more of the outstanding
21 voting securities of which are owned, controlled, or
22 held with power to vote, directly or indirectly, by
23 such company.

1 (2) The term “associate company” of a com-
2 pany means any company in the same holding com-
3 pany system with such company.

4 (3) The term “Commission” means the Federal
5 Energy Regulatory Commission.

6 (4) The term “company” means a corporation,
7 partnership, association, joint stock company, busi-
8 ness trust, or any organized group of persons,
9 whether incorporated or not, or a receiver, trustee,
10 or other liquidating agent of any of the foregoing.

11 (5) The term “electric utility company” means
12 any company that owns or operates facilities used
13 for the generation, transmission, or distribution of
14 electric energy for sale.

15 (6) The terms “exempt wholesale generator”
16 and “foreign utility company” have the same mean-
17 ings as in sections 32 and 33, respectively, of the
18 Public Utility Holding Company Act of 1935, as
19 those sections existed on the day before the effective
20 date of this subtitle.

21 (7) The term “gas utility company” means any
22 company that owns or operates facilities used for
23 distribution at retail (other than the distribution
24 only in enclosed portable containers or distribution
25 to tenants or employees of the company operating

1 such facilities for their own use and not for resale)
2 of natural or manufactured gas for heat, light, or
3 power.

4 (8) The term “holding company” means—

5 (A) any company that directly or indirectly
6 owns, controls, or holds, with power to vote, 10
7 percent or more of the outstanding voting secu-
8 rities of a public utility company or of a holding
9 company of any public utility company; and

10 (B) any person, determined by the Com-
11 mission, after notice and opportunity for hear-
12 ing, to exercise directly or indirectly (either
13 alone or pursuant to an arrangement or under-
14 standing with one or more persons) such a con-
15 trolling influence over the management or poli-
16 cies of any public utility company or holding
17 company as to make it necessary or appropriate
18 for the protection of utility customers with re-
19 spect to rates that such person be subject to the
20 obligations, duties, and liabilities imposed by
21 this subtitle upon holding companies.

22 (9) The term “holding company system” means
23 a holding company, together with its subsidiary com-
24 panies.

1 (10) The term “jurisdictional rates” means
2 rates established by the Commission for the trans-
3 mission of electric energy in interstate commerce,
4 the sale of electric energy at wholesale in interstate
5 commerce, the transportation of natural gas in inter-
6 state commerce, and the sale in interstate commerce
7 of natural gas for resale for ultimate public con-
8 sumption for domestic, commercial, industrial, or
9 any other use.

10 (11) The term “natural gas company” means a
11 person engaged in the transportation of natural gas
12 in interstate commerce or the sale of such gas in
13 interstate commerce for resale.

14 (12) The term “person” means an individual or
15 company.

16 (13) The term “public utility” means any per-
17 son who owns or operates facilities used for trans-
18 mission of electric energy in interstate commerce or
19 sales of electric energy at wholesale in interstate
20 commerce.

21 (14) The term “public utility company” means
22 an electric utility company or a gas utility company.

23 (15) The term “State commission” means any
24 commission, board, agency, or officer, by whatever
25 name designated, of a State, municipality, or other

1 political subdivision of a State that, under the laws
2 of such State, has jurisdiction to regulate public util-
3 ity companies.

4 (16) The term “subsidiary company” of a hold-
5 ing company means—

6 (A) any company, 10 percent or more of
7 the outstanding voting securities of which are
8 directly or indirectly owned, controlled, or held
9 with power to vote, by such holding company;
10 and

11 (B) any person, the management or poli-
12 cies of which the Commission, after notice and
13 opportunity for hearing, determines to be sub-
14 ject to a controlling influence, directly or indi-
15 rectly, by such holding company (either alone or
16 pursuant to an arrangement or understanding
17 with one or more other persons) so as to make
18 it necessary for the protection of utility cus-
19 tomers with respect to rates that such person
20 be subject to the obligations, duties, and liabil-
21 ities imposed by this subtitle upon subsidiary
22 companies of holding companies.

23 (17) The term “voting security” means any se-
24 curity presently entitling the owner or holder thereof

1 to vote in the direction or management of the affairs
2 of a company.

3 **SEC. 502. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
4 **PANY ACT OF 1935.**

5 The Public Utility Holding Company Act of 1935 (15
6 U.S.C. 79a and following) is repealed, effective 12 months
7 after the date of enactment of this Act.

8 **SEC. 503. FEDERAL ACCESS TO BOOKS AND RECORDS.**

9 (a) IN GENERAL.—Each holding company and each
10 associate company thereof shall maintain, and shall make
11 available to the Commission, such books, accounts, memo-
12 randa, and other records as the Commission determines
13 are necessary to identify costs incurred by a public utility
14 or natural gas company that is an associate company of
15 such holding company and necessary or appropriate for
16 the protection of utility customers with respect to jurisdic-
17 tional rates.

18 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
19 ing company or of any subsidiary company of a holding
20 company shall maintain, and make available to the Com-
21 mission, such books, accounts, memoranda, and other
22 records with respect to any transaction with another affili-
23 ate, as the Commission determines are necessary to iden-
24 tify costs incurred by a public utility or natural gas com-
25 pany that is an associate company of such holding com-

1 pany and necessary or appropriate for the protection of
2 utility customers with respect to jurisdictional rates.

3 (c) HOLDING COMPANY SYSTEMS.—The Commission
4 may examine the books, accounts, memoranda, and other
5 records of any company in a holding company system, or
6 any affiliate thereof, as the Commission determines are
7 necessary to identify costs incurred by a public utility or
8 natural gas company within such holding company system
9 and necessary or appropriate for the protection of utility
10 customers with respect to jurisdictional rates.

11 (d) CONFIDENTIALITY.—No member, officer, or em-
12 ployee of the Commission shall divulge any fact or infor-
13 mation that may come to his or her knowledge during the
14 course of examination of books, accounts, memoranda, or
15 other records as provided in this section, except as may
16 be directed by the Commission or by a court of competent
17 jurisdiction.

18 **SEC. 504. STATE ACCESS TO BOOKS AND RECORDS.**

19 (a) IN GENERAL.—Upon the written request of a
20 State commission having jurisdiction to regulate a public
21 utility company in a holding company system, and subject
22 to such terms and conditions as may be necessary and ap-
23 propriate to safeguard against unwarranted disclosure to
24 the public of any trade secrets or sensitive commercial in-
25 formation, a holding company or its associate company or

1 affiliate thereof, wherever located, shall produce for in-
2 spection books, accounts, memoranda, and other records
3 that—

4 (1) have been identified in reasonable detail in
5 a proceeding before the State commission;

6 (2) the State commission determines are nec-
7 essary to identify costs incurred by such public util-
8 ity company; and

9 (3) are necessary for the effective discharge of
10 the responsibilities of the State commission with re-
11 spect to such proceeding.

12 (b) EFFECT ON STATE LAW.—Nothing in this section
13 shall preempt applicable State law concerning the provi-
14 sion of books, accounts, memoranda, or other records, or
15 in any way limit the rights of any State to obtain books,
16 accounts, memoranda, or other records under Federal law,
17 contract, or otherwise.

18 (c) COURT JURISDICTION.—Any United States dis-
19 trict court located in the State in which the State commis-
20 sion referred to in subsection (a) is located shall have ju-
21 risdiction to enforce compliance with this section.

22 **SEC. 505. EXEMPTION AUTHORITY.**

23 (a) RULEMAKING.—Not later than 90 days after the
24 date of enactment of this Act, the Commission shall pro-
25 mulgate a final rule to exempt from the requirements of

1 section 503 any person that is a holding company, solely
2 with respect to one or more—

- 3 (1) qualifying facilities under the Public Utility
4 Regulatory Policies Act of 1978;
5 (2) exempt wholesale generators; or
6 (3) foreign utility companies.

7 (b) OTHER AUTHORITY.—If, upon application or
8 upon its own motion, the Commission finds that the books,
9 accounts, memoranda, and other records of any person are
10 not relevant to the jurisdictional rates of a public utility
11 company or natural gas company, or if the Commission
12 finds that any class of transactions is not relevant to the
13 jurisdictional rates of a public utility company, the Com-
14 mission shall exempt such person or transaction from the
15 requirements of section 503.

16 **SEC. 506. AFFILIATE TRANSACTIONS.**

17 Nothing in this subtitle shall preclude the Commis-
18 sion or a State commission from exercising its jurisdiction
19 under otherwise applicable law to determine whether a
20 public utility company, public utility, or natural gas com-
21 pany may recover in rates any costs of an activity per-
22 formed by an associate company, or any costs of goods
23 or services acquired by such public utility company, public
24 utility, or natural gas company from an associate com-
25 pany.

1 **SEC. 507. APPLICABILITY.**

2 No provision of this subtitle shall apply to, or be
3 deemed to include—

4 (1) the United States;

5 (2) a State or any political subdivision of a
6 State;

7 (3) any foreign governmental authority not op-
8 erating in the United States;

9 (4) any agency, authority, or instrumentality of
10 any entity referred to in paragraph (1), (2), or (3);
11 or

12 (5) any officer, agent, or employee of any entity
13 referred to in paragraph (1), (2), or (3) acting as
14 such in the course of his or her official duty.

15 **SEC. 508. EFFECT ON OTHER REGULATIONS.**

16 Nothing in this subtitle precludes the Commission or
17 a State commission from exercising its jurisdiction under
18 otherwise applicable law to protect utility customers.

19 **SEC. 509. ENFORCEMENT.**

20 The Commission shall have the same powers as set
21 forth in sections 306 through 317 of the Federal Power
22 Act (16 U.S.C. 825e–825p) to enforce the provisions of
23 this subtitle.

24 **SEC. 510. SAVINGS PROVISIONS.**

25 (a) IN GENERAL.—Nothing in this subtitle prohibits
26 a person from engaging in or continuing to engage in ac-

1 tivities or transactions in which it is legally engaged or
2 authorized to engage on the date of enactment of this Act,
3 if that person continues to comply with the terms of any
4 such authorization, whether by rule or by order.

5 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
6 Nothing in this subtitle limits the authority of the Com-
7 mission under the Federal Power Act (16 U.S.C. 791a and
8 following) (including section 301 of that Act) or the Natu-
9 ral Gas Act (15 U.S.C. 717 and following) (including sec-
10 tion 8 of that Act).

11 **SEC. 511. IMPLEMENTATION.**

12 Not later than 12 months after the date of enactment
13 of this Act, the Commission shall—

14 (1) promulgate such regulations as may be nec-
15 essary or appropriate to implement this subtitle; and

16 (2) submit to the Congress detailed rec-
17 ommendations on technical and conforming amend-
18 ments to Federal law necessary to carry out this
19 subtitle and the amendments made by this subtitle.

20 **SEC. 512. TRANSFER OF RESOURCES.**

21 All books and records that relate primarily to the
22 functions transferred to the Commission under this sub-
23 title shall be transferred from the Securities and Exchange
24 Commission to the Commission.

1 **SEC. 513. EFFECTIVE DATE.**

2 This subtitle shall take effect 12 months after the
3 date of enactment of this Act.

4 **SEC. 514. CONFORMING AMENDMENT TO THE FEDERAL**
5 **POWER ACT.**

6 Section 318 of the Federal Power Act (16 U.S.C.
7 825q) is repealed.

8 **Subtitle B—Public Utility**
9 **Regulatory Policies Act of 1978**

10 **SEC. 521. PROSPECTIVE REPEAL.**

11 (a) NEW CONTRACTS.—After the date of enactment
12 of this Act, no electric utility shall be required to enter
13 into a new contract or obligation to purchase or to sell
14 electric energy or capacity pursuant to section 210 of the
15 Public Utility Regulatory Policies Act of 1978.

16 (b) EXISTING RIGHTS AND REMEDIES NOT AF-
17 FECTED.—Nothing in this section affects the rights or
18 remedies of any party with respect to the purchase or sale
19 of electric energy or capacity from or to a facility deter-
20 mined to be a qualifying small power production facility
21 or a qualifying cogeneration facility under section 210 of
22 the Public Utility Regulatory Policies Act of 1978 pursu-
23 ant to any contract or obligation to purchase or to sell
24 electric energy or capacity in effect on the date of the en-
25 actment of this Act, including the right to recover the
26 costs of purchasing such electric energy or capacity.

1 (c) INTERPRETATIONS AND ACTIONS TAKEN.—Noth-
2 ing in this subtitle may be deemed or construed as imply-
3 ing congressional ratification of any interpretation of, or
4 any action taken pursuant to, the Public Utility Regu-
5 latory Policies Act of 1978.

6 **SEC. 522. RECOVERY OF COSTS.**

7 In order to assure recovery by electric utilities pur-
8 chasing electric energy or capacity from a qualifying facil-
9 ity pursuant to any legally enforceable obligation entered
10 into or imposed pursuant to section 210 of the Public Util-
11 ity Regulatory Policies Act of 1978 prior to the date of
12 enactment of this Act of all costs associated with such pur-
13 chases, the Federal Energy Regulatory Commission shall
14 promulgate and enforce such regulations as may be re-
15 quired to assure that no utility shall be required directly
16 or indirectly to absorb the costs associated with such pur-
17 chases from a qualifying facility after the date of the en-
18 actment of this Act. Such regulations shall be treated as
19 a rule enforceable under the Federal Power Act (16
20 U.S.C. 791a–825r).

21 **SEC. 523. DEFINITIONS.**

22 For purposes of this subtitle:

23 (1) The term “electric utility” means any per-
24 son, State agency, or Federal agency, which sells
25 electric energy.

1 (2) The term “qualifying small power produc-
2 tion facility” has the same meaning as provided in
3 section 3(17)(C) of the Federal Power Act.

4 (3) The term “qualifying cogeneration facility”
5 has the same meaning as provided in section
6 3(18)(A) of the Federal Power Act.

7 (4) The term “qualifying facility” means either
8 a qualifying small power production facility or a
9 qualifying cogeneration facility.

10 **Subtitle C—Additional Provisions** 11 **Promoting Competition**

12 **SEC. 531. AGGREGATION.**

13 Part II of the Federal Power Act (16 U.S.C. 824 and
14 following) is amended by adding at the end the following
15 section:

16 **“SEC. 219. PURCHASE OF ELECTRIC ENERGY BY RETAIL** 17 **ELECTRIC CONSUMERS.**

18 “Subject to not unduly discriminatory or preferential
19 State requirements, each retail electric consumer may des-
20 ignate any entity that aggregates consumers to negotiate
21 on the consumer’s behalf the purchase of retail electric
22 energy on an aggregate basis if the consumer is served
23 by a local distribution company whose local distribution
24 facilities are subject to open access, and no State may pro-
25 hibit any political subdivision of a State or any electric

1 cooperative from serving as an entity that aggregates con-
2 sumers, if such entity provides open access to any local
3 distribution facilities it may own or operate.”.

4 **SEC. 532. INTERCONNECTION.**

5 (a) DISTRIBUTED GENERATION FACILITIES.—Sec-
6 tion 210 of the Federal Power Act is amended by adding
7 the following at the end thereof:

8 “(f) SPECIAL RULE FOR DISTRIBUTED GENERATION
9 FACILITIES.—

10 “(1) DEFINITION.—As used in this subsection,
11 the term ‘distributed generation facility’ means an
12 electric power generation facility that serves retail
13 electric consumers at the facility site and intercon-
14 nects with local distribution facilities.

15 “(2) INTERCONNECTION.—A local distribution
16 company shall interconnect a distributed generation
17 facility with the local distribution facilities of such
18 company if the distributed generation facility owner
19 complies with the final rule promulgated under para-
20 graph (3) and pays the costs directly related to such
21 interconnection.

22 “(3) RULES.—Within one year after the date of
23 enactment of this subsection, the Commission shall
24 promulgate a final rule to establish safety, reliabil-
25 ity, and power quality standards relating to distrib-

1 uted generation facilities. To the extent feasible, the
2 Commission shall develop the standards through a
3 process involving interested parties. For purposes of
4 developing such standards, the Commission shall es-
5 tablish an advisory committee composed of qualified
6 experts to make recommendations to the Commis-
7 sion.”.

8 (b) INTERCONNECTION OF OTHER FACILITIES.—

9 Section 210 of the Federal Power Act is amended as fol-
10 lows:

11 (1) In subsection (a)(1) (16 U.S.C.
12 824i(a)(1))—

13 (A) by inserting “transmitting utility, local
14 distribution companies” after “electric utility,”;
15 and

16 (B) by inserting “any transmitting utility,”
17 after “small power production facility,” in sub-
18 paragraph (A).

19 (2) In subsection (b)(2) (16 U.S.C. 824i(b)(2))
20 by striking “an evidentiary hearing” and inserting
21 “a hearing”.

22 (3) In subsection (c)(2) by striking “or” at the
23 end of subparagraph (B), by striking “and” the end
24 of subparagraph (C) and inserting “or”, and adding
25 the following at the end thereof:

1 “(D) promote competition in electricity
2 markets, and”.

3 (4) In subsection (d) by deleting the last sen-
4 tence.

5 (5) By adding the following at the end thereof:

6 “(g) TRANSMISSION INTERCONNECTION RULE.—
7 Within one year after the date of enactment of this sub-
8 section, the Commission shall promulgate a final rule to
9 establish safety, reliability, and power quality standards
10 for the interconnection of any generating facility with the
11 transmission facilities of any transmitting utility. To the
12 extent feasible, the Commission shall develop the stand-
13 ards through a process involving interested parties. For
14 purposes of developing such standards, the Commission
15 shall establish an advisory committee composed of quali-
16 fied experts to make recommendations to the Commis-
17 sion.”.

18 **TITLE VI—FEDERAL ELECTRIC**
19 **UTILITIES**
20 **Subtitle A—Tennessee Valley**
21 **Authority**

22 **SEC. 601. DEFINITIONS.**

23 For purposes of this subtitle:

24 (1) The term “Commission” means the Federal
25 Energy Regulatory Commission.

1 (2) The term “distributor” means a municipal
2 or cooperative organization that owns, controls, or
3 operates local distribution facilities and which on
4 December 31, 1997, purchased electric power at
5 wholesale from the Tennessee Valley Authority
6 under an all-requirements contract.

7 (3) The term “distributor service area” means
8 the geographic area within which a distributor is au-
9 thorized by State law to sell electric power to retail
10 electric consumers on the date of enactment of this
11 Act.

12 (4) The term “electric utility” has the same
13 meaning as provided by section 3(22) of the Federal
14 Power Act (16 U.S.C. 796(22)).

15 (5) The term “excess electric power” means
16 that portion of the electric power and capacity that
17 is available to the Tennessee Valley Authority and
18 which exceeds the Tennessee Valley Authority’s firm
19 power supply obligations under contracts entered
20 into in accordance with sections 10, 11, and 12 of
21 the Tennessee Valley Authority Act of 1933 (16
22 U.S.C. 831i, 831j, and 831k).

23 (6) The term “public utility” has the same
24 meaning as provided by section 201(e) of the Fed-
25 eral Power Act (16 U.S.C. 824(e)(1)).

1 (7) The term “retail electric consumer” has the
2 same meaning as provided by section 3 of the Fed-
3 eral Power Act (16 U.S.C. 796).

4 (8) The term “Tennessee Valley Region” means
5 the geographic area in which the Tennessee Valley
6 Authority or its distributors were the primary source
7 of electric power on December 31, 1997.

8 **SEC. 602. WHOLESALE COMPETITION IN THE TENNESSEE**
9 **VALLEY REGION.**

10 (a) AMENDMENTS TO THE FEDERAL POWER ACT.—

11 (1) Section 212(f) of the Federal Power Act
12 (16 U.S.C. 824k(f)), relating to interconnection or
13 wheeling orders that result in the sale or delivery of
14 electric power outside the Tennessee Valley Region,
15 is repealed.

16 (2) Section 212(j) of the Federal Power Act
17 (16 U.S.C. 824k(j)), relating to transmission within
18 the Tennessee Valley Region, is repealed.

19 (b) AMENDMENTS TO THE TENNESSEE VALLEY AU-
20 THORITY ACT.—(1) The third sentence of the first para-
21 graph of section 15d(a) of the Tennessee Valley Authority
22 Act of 1933 (16 U.S.C. 831n–4(a)), limiting the sale or
23 delivery of electric power outside the area for which the
24 Tennessee Valley Authority or its distributors were the

1 primary source of electric power on July 1, 1957, is re-
2 pealed.

3 (2) The second and third paragraphs of section
4 15d(a) of the Tennessee Valley Authority Act of 1933 (16
5 U.S.C. 831n-4(a)) are repealed.

6 **SEC. 603. TENNESSEE VALLEY AUTHORITY POWER SALES.**

7 (a) LIMIT ON RETAIL SALES BY TENNESSEE VALLEY
8 AUTHORITY.—Notwithstanding sections 10, 11, and 12 of
9 the Tennessee Valley Authority Act (16 U.S.C. 831i), the
10 Tennessee Valley Authority shall not sell electric power at
11 retail, except it may sell electric power to—

12 (1) a retail electric consumer (or predecessor in
13 interest) that had a contract for the purchase of
14 electric power from the Tennessee Valley Authority
15 on the date of enactment of this Act; or

16 (2) a retail electric consumer who consumes
17 that electric power within a distributor service area,
18 if—

19 (A) the distributor's firm electric power
20 purchases from the Tennessee Valley Authority
21 are 50 percent or less of the distributor's total
22 retail sales; or

23 (B) the distributor agrees that the Ten-
24 nessee Valley Authority can sell electric power
25 to such retail electric consumer.

1 (b) REGIONAL PREFERENCE FOR WHOLESALE
2 POWER SALES.—

3 (1) REGIONAL PREFERENCE.—Notwithstanding
4 sections 10, 11, and 12, or any other provision of
5 the Tennessee Valley Authority Act of 1933 (16
6 U.S.C. 831 and following), the sale of electric power
7 at wholesale by the Tennessee Valley Authority for
8 use outside the Tennessee Valley Region shall be
9 limited to excess electric power.

10 (2) SALES OF EXCESS ELECTRIC POWER.—The
11 Tennessee Valley Authority shall not offer firm ex-
12 cess electric power under an agreement with a term
13 of three years or longer to a new wholesale customer
14 at rates, terms, and conditions more favorable than
15 those offered to any distributor for comparable elec-
16 tric power, taking into account such factors as the
17 amount of electric power sold, the firmness of such
18 power, and the length of the contract term unless
19 the distributor or distributors that are purchasing
20 electric power under equivalent firm power contracts
21 agree to the sale to the new customer.

22 Nothing in this subsection shall prevent the Tennessee
23 Valley Authority from making exchange power arrange-
24 ments with other electric utilities when economically fea-
25 sible.

1 (c) REGULATION OF TVA WHOLESALE POWER
2 SALES.—Notwithstanding section 201(f) of the Federal
3 Power Act, sections 205, 206, 208, and 210 through 213
4 and sections 301 through 304, 306, 307 (except the last
5 sentence of paragraph (c)), 308, 309, 313, and 317 of the
6 Federal Power Act apply to sales of electric power at
7 wholesale by the Tennessee Valley Authority for use out-
8 side the Tennessee Valley Region to the same extent and
9 in the same manner as such provisions apply to wholesale
10 sales of electric power in interstate commerce by a public
11 utility otherwise subject to the jurisdiction of the Commis-
12 sion under part II of such Act.

13 (d) APPLICATION OF TENNESSEE VALLEY AUTHOR-
14 ITY ACT TO SALES OUTSIDE TENNESSEE VALLEY RE-
15 GION.—The third proviso of section 10 of the Tennessee
16 Valley Authority Act of 1933 (16 U.S.C. 831i) and the
17 second and third provisos of section 12 of the Tennessee
18 Valley Authority Act of 1933 (16 U.S.C. 831k) shall not
19 apply to any sale of excess electric power by the Tennessee
20 Valley Authority for use outside the Tennessee Valley Re-
21 gion.

22 **SEC. 604. TENNESSEE VALLEY AUTHORITY ELECTRIC GEN-**
23 **ERATION FACILITIES.**

24 Section 15d(a) of the Tennessee Valley Authority Act
25 of 1933 (16 U.S.C. 831n–4(a)) is amended by striking

1 the period at the end of the second sentence and inserting
2 the following: “, if the Corporation determines that the
3 construction, acquisition, enlargement, improvement, or
4 replacement of any plant or facility used or to be used
5 for the generation of electric power is necessary to supply
6 the demands of distributors (as defined in section 601 of
7 the Electricity Competition and Reliability Act) and, to
8 the extent permitted by section 603(a) of such Act, retail
9 electric consumers of the Corporation.”.

10 **SEC. 605. RENEGOTIATION OF ALL REQUIREMENTS POWER**
11 **CONTRACTS.**

12 (a) RENEGOTIATION.—Within one year following the
13 date of enactment of this Act, the Tennessee Valley Au-
14 thority and the distributors shall renegotiate their existing
15 all requirements power contracts with respect to—

- 16 (1) the remaining term;
17 (2) the length of the termination notice;
18 (3) the amount of electric power a distributor
19 may purchase from an electric utility other than the
20 Tennessee Valley Authority, and access to the Ten-
21 nessee Valley Authority transmission system for that
22 electric power; and
23 (4) stranded cost recovery.

24 (b) RESOLUTION.—If the parties are unable to reach
25 agreement with regard to any of the issues under sub-

1 section (a) within the one-year period set forth in sub-
2 section (a), the distributor shall have the right to termi-
3 nate the contract upon not less than three years notice.

4 **SEC. 606. REGULATION OF TENNESSEE VALLEY AUTHORITY**
5 **TRANSMISSION SYSTEM.**

6 Notwithstanding sections 201(b)(1) and 201(f) of the
7 Federal Power Act, sections 202(h), 205, 206, 208, and
8 210 through 213 and sections 301 through 304, 306, 307
9 (except the last sentence of subsection (c)), 308, 309, 313,
10 and 317 of the Federal Power Act apply to the trans-
11 mission and local distribution of electric power by the Ten-
12 nessee Valley Authority to the same extent and in the
13 same manner as such provisions apply to the transmission
14 of electric power in interstate commerce by a public utility
15 otherwise subject to the jurisdiction of the Commission
16 under part II of such Act.

17 **SEC. 607. REGULATION OF TENNESSEE VALLEY AUTHORITY**
18 **DISTRIBUTORS.**

19 (a) ELECTION TO REPEAL TENNESSEE VALLEY AU-
20 THORITY REGULATION OF DISTRIBUTORS.—Upon the
21 election of a distributor, the third proviso of section 10
22 of the Tennessee Valley Authority Act of 1933 (16 U.S.C.
23 831i) and the second and third provisos of section 12 of
24 the Tennessee Valley Authority Act of 1933 (16 U.S.C.
25 831k) shall not apply to wholesale sales of electric power

1 by the Tennessee Valley Authority in the Tennessee Valley
2 Region after the date of enactment of this Act, and the
3 Tennessee Valley Authority shall not be authorized to reg-
4 ulate, by means of rules, contract provisions, resale rate
5 schedules, contract termination rights, or any other meth-
6 od, any rates, terms, or conditions imposed on the resale
7 of such electric power by such distributor, or any rates,
8 terms, or conditions for the use of local distribution facili-
9 ties.

10 (b) AUTHORITY OF GOVERNING BODIES OF DIS-
11 TRIBUTORS.—Any regulatory authority exercised by the
12 Tennessee Valley Authority over any distributor making
13 an election authorized in subsection (a) shall be exercised
14 by the governing body of such distributor, in accordance
15 with the laws of the State in which it is organized. In the
16 event a distributor does not make the election authorized
17 in subsection (a), the provisions of the Tennessee Valley
18 Authority Act specified in that subsection shall continue
19 to apply for the duration of any wholesale power contract
20 between the Tennessee Valley Authority and the distribu-
21 tor, according to its terms.

22 (c) USE OF FUNDS.—In any contract between the
23 Tennessee Valley Authority and a distributor for the pur-
24 chase of at least 70 percent of the distributor's require-
25 ments for the sale of electric power, the Tennessee Valley

1 Authority shall include such terms and conditions as may
2 be reasonably necessary to assure that the financial bene-
3 fits of a distributor's electric system operations are allo-
4 cated to the distributor's retail electric consumers.

5 (d) REMOVAL OF PURPA RATEMAKING AUTHOR-
6 ITY.—Section 3(17) of the Public Utility Regulatory Poli-
7 cies Act of 1978 (16 U.S.C. 2602(17)) is amended by
8 striking “, and in the case of an electric utility with re-
9 spect to which the Tennessee Valley Authority has rate-
10 making authority, such term means the Tennessee Valley
11 Authority.

12 **SEC. 608. STRANDED COST RECOVERY.**

13 (a) IN GENERAL.—Within six months after the date
14 of enactment of this Act, or sooner as part of any distribu-
15 tors renegotiation of its contract under section 605, the
16 Tennessee Valley Authority shall make a good faith effort
17 to reach agreement with distributors for recovery of its
18 stranded costs. The Tennessee Valley Authority and the
19 distributors shall submit jointly, or if they disagree, sub-
20 mit separately, a stranded cost recovery plan or plans to
21 the Commission for review. The Commission shall ap-
22 prove, reject, or modify such plan or plans and issue an
23 order within one year of the date of enactment of this Act,
24 to provide for recovery of stranded costs (as determined
25 by the Commission) by the Tennessee Valley Authority

1 from any departing power or transmission customer. This
2 order shall provide that customers that did not cause
3 stranded costs to be incurred by the Tennessee Valley Au-
4 thority are not obligated to pay such costs on behalf of
5 other customers. The Tennessee Valley Authority is au-
6 thorized to recover such of its stranded costs as are ap-
7 proved by the Commission. The Tennessee Valley Author-
8 ity may not recover stranded costs after September 30,
9 2007, unless the person against whom such charges are
10 assessed agrees otherwise.

11 (b) DEBT.—Stranded costs recovered by the Ten-
12 nessee Valley Authority under subsection (a) shall be used
13 to pay down the Tennessee Valley Authority's debt to the
14 extent determined by the Tennessee Valley Authority to
15 be consistent with proper financial management. The Ten-
16 nessee Valley Authority may not use amounts recovered
17 to pay for additions to the Tennessee Valley Authority's
18 generation capacity.

19 (c) UNBUNDLING.—Any stranded cost recovery
20 charges assessed by the Tennessee Valley Authority on re-
21 tail or wholesale customers or assessed on retail electric
22 consumers served by distributors shall be unbundled from
23 the retail or wholesale rate otherwise applicable to that
24 consumer and stated on the consumer's bill as a separate
25 charge.

1 (d) REPORT.—Beginning in fiscal year 2001, as part
2 of the annual management report submitted by the Ten-
3 nessee Valley Authority to Congress, the Tennessee Valley
4 Authority shall also specifically report:

5 (1) the status of the Tennessee Valley
6 Authority's long-range financial plans and the
7 progress toward its goal of competitively priced elec-
8 tric power, and a general discussion of the Ten-
9 nessee Valley Authority's prospects on meeting the
10 objectives of the Ten Year Business Outlook issued
11 on July 22, 1997;

12 (2) any changes in assumptions since the pre-
13 vious report that may have a material effect on the
14 Tennessee Valley Authority's long-range financial
15 plans;

16 (3) the source of funds used for any generation
17 and transmission capacity additions;

18 (4) the use or other disposition of amounts re-
19 covered by the Tennessee Valley Authority under the
20 Tennessee Valley Authority Act and this Act;

21 (5) the amount by which the Tennessee Valley
22 Authority's publicly-held debt was reduced; and

23 (6) the projected amount by which the Ten-
24 nessee Valley Authority's publicly held debt will be
25 reduced.

1 **SEC. 609. APPLICATION OF ANTITRUST LAW.**

2 (a) IN GENERAL.—The Tennessee Valley Authority
3 shall be subject to the antitrust laws of the United States
4 with respect to the operation of its electric power and
5 transmission systems. For purposes of this section, the
6 term “antitrust laws” has the meaning given such term
7 in subsection (a) of the first section of the Clayton Act
8 (15 U.S.C. 12(a)), except that such term includes section
9 5 of the Federal Trade Commission Act (15 U.S.C. 45)
10 to the extent that such section 5 applies to unfair methods
11 of competition.

12 (b) DAMAGES.—No damages, interest on damages,
13 costs, or attorney’s fees may be recovered under section
14 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
15 15c) from the Tennessee Valley Authority.

16 **SEC. 610. SAVINGS PROVISION.**

17 Nothing in this subtitle shall affect section 15d(b) of
18 the Tennessee Valley Authority Act of 1933 (16 U.S.C.
19 831n–4(b)), providing that bonds issued by the Tennessee
20 Valley Authority shall not be obligations of, nor shall pay-
21 ment of the principal thereof or interest thereon be guar-
22 anteed by, the United States.

23 **Subtitle B—Bonneville Power**
24 **Administration**

25 **SEC. 621. DEFINITIONS.**

26 As used in this subtitle:

1 (1) The term ‘Bonneville Administrator’ means
2 the Administrator of the Bonneville Power Adminis-
3 tration.

4 (2) The term ‘Bonneville Transmission System’
5 means transmission facilities owned or leased by the
6 United States and operated by the Bonneville Power
7 Administration or by another entity under section
8 202(h) of the Federal Power Act.

9 (3) The terms “Commission”, “electric utility”,
10 “retail electric consumer”, and “transmitting util-
11 ity” have the same meanings as provided by section
12 3 of the Federal Power Act (16 U.S.C. 796).

13 (4) The term “major resource” has the mean-
14 ing given such term in section 3(12) of the Pacific
15 Northwest Electric Power Planning and Conserva-
16 tion Act.

17 (5) The term ‘Pacific Northwest’ has the mean-
18 ing given that term in section 3(14) of the Pacific
19 Northwest Electric Power Planning and Conserva-
20 tion Act (16 U.S.C. 839a(14)).

21 **SEC. 622. REGULATION OF BONNEVILLE TRANSMISSION**
22 **SYSTEM.**

23 (a) IN GENERAL.—After September 30, 2001, not-
24 withstanding section 201(f) of the Federal Power Act, sec-
25 tions 202(h), 205, 206, 208, and 210 through 213 and

1 sections 301 through 304, 306, 307 (except the last sen-
2 tence of paragraph (c)), 308, 309, 313, and 317 of the
3 Federal Power Act apply to the Bonneville Transmission
4 System and the transmission of electric energy over the
5 Bonneville Transmission System.

6 (b) ADDITIONAL RULES.—Any determination by the
7 Commission of rates, terms, and conditions for the trans-
8 mission of electric energy under subsection (a) shall be
9 subject to the following rules:

10 (1) Phasing in changes in transmission rates or
11 charges that would cause unreasonable cost shifts
12 among transmission customers if implemented at
13 once.

14 (2) Mitigating unreasonable adverse effects on
15 transmission customers in the Pacific Northwest
16 that would otherwise result from changes in the
17 treatment of costs to acquire transmission to serve
18 customers historically served by General Transfer
19 Agreements entered into between the Bonneville Ad-
20 ministrator and other transmitting utilities prior to
21 the enactment of this Act. This paragraph shall not
22 apply if the Bonneville Transmission System is oper-
23 ated by a regional transmission organization ap-
24 proved by the Commission.

1 (3) No direct assignment of the costs of trans-
2 mission facilities that were included in the Bonne-
3 ville Administrator's transmission rates in effect on
4 October 1, 1998, or costs for replacement of such fa-
5 cilities.

6 (4) Assuring the Bonneville Power Administra-
7 tion's transmission rates and charges are established
8 sufficient to—

9 (A) recover Federal investment in the Bon-
10 neville Transmission System over a reasonable
11 period of years after first meeting all the Bon-
12 neville Power Administration's other trans-
13 mission costs and expenses; and

14 (B) produce the revenues necessary to as-
15 sure timely payment of all transmission-related
16 costs and expenses;

17 provided that this paragraph shall not be construed
18 to require any particular methodology for setting
19 transmission rates.

20 (5) Rules established by the Commission to—

21 (A) assure transmission access is provided
22 over the Bonneville Transmission System for
23 hydroelectric power that must be generated and
24 transmitted at a particular time in order to re-
25 duce levels of dissolved nitrogen gas harmful to

1 fish, with such access to be provided in a man-
2 ner that displaces other electric energy using
3 the Bonneville Transmission System but does
4 not impair service to loads, require operations
5 that may damage generation facilities, or alter
6 commercial relationships between the electric
7 utility whose electric energy was displaced and
8 its customer; and

9 (B) provide methods for compensation be-
10 tween or among the electric utility that sold the
11 hydroelectric power and the party or parties af-
12 fected by the displacement of electric energy.

13 (6) Section 623 of this Act (relating to sur-
14 charge on transmission rates to recover otherwise
15 nonrecoverable power costs).

16 (c) APPLICABILITY.—Subsection (a) shall not apply
17 to—

18 (1) the Bonneville Power Administration's ac-
19 tivities other than transmission of electric energy
20 over the Bonneville Transmission System; or

21 (2) a contract in effect on the date of enact-
22 ment of this Act, except for rates which are adjust-
23 able by the Bonneville Administrator under the con-
24 tract; a treaty of the United States; or a contract
25 concerning the delivery of electric energy and capac-

1 ity entered into by entities designated pursuant to
2 such a treaty.

3 (d) PRIORITY OF PAYMENTS.—Nothing in this sec-
4 tion shall alter or be construed to alter the priority of pay-
5 ments established in section 13(b) of the Federal Colum-
6 bia River Transmission System Act (16 U.S.C. 838k(b))
7 or the requirements of section 11 of that Act (16 U.S.C.
8 838i).

9 (e) COSTS AND REVENUES.—Costs and revenues
10 shall be allocated to the Bonneville Transmission System
11 in accordance with rules to be promulgated by the Com-
12 mission.

13 (f) HEARINGS.—In any proceeding, or part of a pro-
14 ceeding, that the Commission sets for hearing before an
15 administrative law judge, with respect to the rates, terms,
16 or conditions for transmission of electric energy by the
17 Bonneville Power Administration, all evidentiary hearings
18 shall be conducted in the Pacific Northwest.

19 **SEC. 623. SURCHARGE ON TRANSMISSION RATES TO RE-**
20 **COVER NONRECOVERABLE POWER COSTS.**

21 (a) SURCHARGE AUTHORITY.—By October 1, 2001,
22 notwithstanding section 201(f) of the Federal Power Act,
23 the Bonneville Administrator shall propose and the Com-
24 mission shall, by accepting or modifying the Bonneville
25 Administrator's proposal, authorize the Administrator to

1 place a surcharge on rates or charges for transmission
2 services over the Bonneville Transmission System when
3 necessary to recover power costs that cannot be recovered
4 through power revenues to meet the cost recovery require-
5 ments of section 7(a)(1) of the Pacific Northwest Electric
6 Power Planning and Conservation Act (16 U.S.C.
7 839e(a)(1)).

8 (b) REQUIREMENTS.—The transmission surcharge
9 referred to in subsection (a) shall—

10 (1) not recover more than \$600,000,000 nor
11 more than \$100,000,000 in any fiscal year;

12 (2) be available only between October 1, 2001,
13 and October 1, 2016;

14 (3) be implemented by the Bonneville Adminis-
15 trator only when the Administrator projects that
16 available financial reserves in the Bonneville Power
17 Administration Fund attributable to the power func-
18 tion will fall below \$150,000,000; and

19 (4) not apply to use of the Bonneville Trans-
20 mission System for sales of electric energy for use
21 outside the Pacific Northwest.

22 (c) IMPLEMENTATION.—The Bonneville Adminis-
23 trator shall have sole discretion to implement the sur-
24 charge on rates or charges for transmission services au-
25 thorized by the Commission under subsection (a). Before

1 implementing the surcharge, the Bonneville Administrator
2 shall—

3 (1) make available information concerning the
4 need for and amount of the surcharge, and its pro-
5 posed effective date; and

6 (2) conduct a public process of not less than 30
7 days in the Pacific Northwest to receive comments
8 on implementation of the surcharge and receive rec-
9 ommendations from the Pacific Northwest Electric
10 Power and Conservation Planning Council concern-
11 ing cost management options that could mitigate the
12 need to implement the surcharge.

13 If, after taking into consideration those comments and
14 recommendations and ensuring that reasonable and pru-
15 dent alternatives to implementation of the surcharge have
16 been undertaken, the Bonneville Administrator decides to
17 implement a surcharge, the Administrator may implement
18 the surcharge by filing the proposed surcharge with the
19 Commission. The surcharge shall take effect on the Bon-
20 neville Administrator's proposed effective date, but no ear-
21 lier than 60 days following the Administrator's filing of
22 the proposed surcharge to the Commission for approval.

23 (d) COMMISSION REVIEW.—Within 120 days after
24 the effective date of the surcharge, the Commission shall
25 accept, reject, or modify the surcharge and communicate

1 its decision to the Bonneville Administrator. If the Com-
2 mission rejects or modifies the surcharge, the Commission
3 may order the Bonneville Power Administration to refund,
4 with interest, the portion of the surcharge the Commission
5 found not justified or the Commission may authorize the
6 Bonneville Power Administration to recover amounts from
7 customers who underpaid or did not pay the surcharge.
8 If the Commission orders modification of the surcharge,
9 such modified charge shall be effective on the date and
10 for the time period specified by the Commission.

11 (e) REPAYMENT.—Any amounts recovered through
12 the transmission surcharge shall be treated as loans to the
13 Bonneville Power Administration's power function by the
14 transmission function. The Bonneville Power Administra-
15 tion shall repay the loans as soon as possible from power
16 revenues once the Bonneville Power Administration is able
17 to meet other power cost recovery and Treasury repay-
18 ment obligations on an annual basis using power revenues.
19 To the extent practicable, the Administrator shall refund
20 all or a portion of the surcharge collected from trans-
21 mission customers, as directed and determined appro-
22 priate by the Commission. The borrowed revenues shall
23 bear interest at a rate determined appropriate by the
24 Commission.

1 (f) COST RECOVERY.—For the recovery of costs re-
2 lating to any generation or conservation resources fi-
3 nanced by debt issued by a non-Federal party before Octo-
4 ber 1, 1998 (and any refundings and refinancing thereof),
5 and secured by an obligation of the Bonneville Power Ad-
6 ministration to make payments or net bill power and
7 transmission service that cannot be recovered through
8 power rates and charges and paid in accordance with the
9 application of revenues and priority of payments specified
10 by section 13(b) of the Federal Columbia River Trans-
11 mission System Act of 1974 (16 U.S.C. 838k(b)), the pro-
12 visions of this section apply, except for the recovery limita-
13 tions under subsection (b)(1) and the time limits under
14 subsection (b)(2), but only to the extent such recovery
15 would have been allowed under laws applicable to the Bon-
16 neville Power Administration as of October 1, 1998.

17 **SEC. 624. LIMIT ON RETAIL SALES BY BONNEVILLE POWER**
18 **ADMINISTRATION.**

19 Notwithstanding section 5(a) of the Bonneville
20 Project Act (16 U.S.C. 832d(a)), the Bonneville Power
21 Administration shall not sell electric energy or capacity to
22 any retail electric consumer that did not have a contract
23 for the purchase of electric energy from the Bonneville
24 Power Administration for use at specific facilities on Octo-
25 ber 1, 1998.

1 **SEC. 625. ACQUISITION OF NEW MAJOR GENERATING RE-**
2 **SOURCES.**

3 Section 6 of the Pacific Northwest Electric Power
4 Planning and Conservation Act (16 U.S.C. 839d) is
5 amended by adding the following new subsection at the
6 end thereof:

7 “(n) ACQUISITION OF NEW MAJOR GENERATING RE-
8 SOURCES.—Notwithstanding any other provision of law,
9 the Administrator shall not acquire any new major re-
10 source after the date of enactment of this subsection un-
11 less the Commission determines that satisfactory contrac-
12 tual and other financial arrangements have been made to
13 ensure that the customer or customers on whose behalf
14 the resource is acquired commit to pay the full cost of
15 the resource and the Administrator shall not acquire any
16 new major resource that the Administrator reasonably ex-
17 pects may require implementation of the surcharge au-
18 thorized by section 623 of the Electricity Competition and
19 Reliability Act.”.

20 **SEC. 626. APPLICATION OF ANTITRUST LAW.**

21 (a) IN GENERAL.—The Bonneville Power Adminis-
22 tration shall be subject to the antitrust laws of the United
23 States with respect to its sale of electric energy and capac-
24 ity and the operation of its transmission system. For pur-
25 poses of this section, the term “antitrust laws” has the
26 meaning given such term in subsection (a) of the first sec-

1 tion of the Clayton Act (15 U.S.C. 12(a)), except that
2 such term includes section 5 of the Federal Trade Com-
3 mission Act (15 U.S.C. 45) to the extent that such section
4 5 applies to unfair methods of competition.

5 (b) DAMAGES.—No damages, interest on damages,
6 costs, or attorney’s fees may be recovered under section
7 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
8 15c) from the Bonneville Power Administration.

9 **SEC. 627. CONFORMING AMENDMENTS.**

10 (a) FEDERAL POWER ACT.—Section 212(i) of the
11 Federal Power Act (16 U.S.C. 824(i)) is repealed.

12 (b) FEDERAL COLUMBIA RIVER TRANSMISSION SYS-
13 TEM ACT.—(1) Section 3(c) of the Federal Columbia
14 River Transmission System Act (16 U.S.C. 838a(c)) is
15 amended by inserting “, and transmission facilities with
16 an estimated capital cost exceeding \$30,000,000 in 1998
17 dollars, adjusted using the United States Gross Domestic
18 Product Implicit Price Deflator Index”, after “own facili-
19 ties”.

20 (2) Section 6 of the Federal Columbia River Trans-
21 mission System Act (16 U.S.C. 838d) is repealed.

22 (3) Section 9 of the Federal Columbia River Trans-
23 mission System Act (16 U.S.C. 838g) is amended to read
24 as follows:

1 **“SEC. 9. RATES AND CHARGES.**

2 “Schedules of rates and charges for the sale, includ-
3 ing dispositions to Federal agencies, of all electric power
4 made available to the Administrator pursuant to section
5 8 of this Act or otherwise acquired shall be established—

6 “(1) with a view to encouraging the widest pos-
7 sible diversified use of electric power at the lowest
8 possible rates to consumers consistent with sound
9 business principles;

10 “(2) having regard to the recovery (upon the
11 basis of the application of such rate schedules to the
12 capacity of the electric facilities of the projects) of
13 the cost of producing such electric power, including
14 the amortization of the capital investment allocated
15 to power over a reasonable period of years and pay-
16 ments provided for in section 11(b)(9) of this Act;
17 and

18 “(3) at levels to produce such additional power
19 revenues as may be required, in the aggregate with
20 all other power revenues of the Administrator, to
21 pay when due the principal of, premiums, discounts,
22 and expenses in connection with the issuance of and
23 interest on all bonds issued and outstanding pursu-
24 ant to this Act for other than the construction, ac-
25 quisition, and replacement of the Federal trans-
26 mission system, and amounts required to establish

1 and maintain reserve and other funds and accounts
2 established in connection therewith.

3 Electric power rates under this section shall be established
4 by the Administrator in accordance with section 7 of the
5 Pacific Northwest Electric Power Planning and Conserva-
6 tion Act.”.

7 (4) Section 10 of the Federal Columbia River Trans-
8 mission System Act (16 U.S.C. 838h) is repealed.

9 (c) REGIONAL PREFERENCE ACT.—Section 6 of Pub-
10 lic Law 88–552 (16 U.S.C. 837e), commonly known as
11 the “Regional Preference Act”, is amended by striking
12 “Federal energy or” in the first sentence and by striking
13 the second sentence.

14 (d) NORTHWEST POWER ACT.—(1) Section 7(a)(1)
15 of the Pacific Northwest Electric Power Planning and
16 Conservation Act (16 U.S.C. 839e(a)(1)) is amended to
17 read as follows:

18 “(a)(1) The Administrator shall establish, and peri-
19 odically review and revise, rates for the sale and disposi-
20 tion of electric power and shall periodically review and,
21 if necessary, propose revisions to rates for the trans-
22 mission of electric power. Rates for the sale and disposi-
23 tion of electric power shall be established and, as appro-
24 priate, revised to recover, in accordance with sound busi-
25 ness principles, the costs associated with the acquisition

1 and conservation of electric power, including the amortiza-
2 tion of the Federal investment allocable to electric power
3 rates in the Federal Columbia River Power System (in-
4 cluding irrigation electric power-related costs required to
5 be repaid out of electric power revenues) over a reasonable
6 period of years and the other costs and expenses incurred
7 by the Administrator pursuant to this Act and other provi-
8 sions of law. Rates for the sale and disposition of electric
9 power shall be established in accordance with section 9
10 of the Federal Columbia River Transmission System Act
11 (16 U.S.C. 838g), section 5 of the Flood Control Act of
12 1944 (16 U.S.C. 825s), and this Act.”.

13 (2) Section 7(a)(2) of the Pacific Northwest Electric
14 Power Planning and Conservation Act (16 U.S.C.
15 839e(a)(2)) is amended—

16 (A) by striking “Rates” and inserting “Power
17 rates”;

18 (B) by inserting “and” after the comma in sub-
19 paragraph (A);

20 (C) by striking “, and” and inserting a period
21 at the end of subparagraph (B); and

22 (D) by striking subparagraph (C).

23 (3) Section 7(i) of the Pacific Northwest Electric
24 Power Planning and Conservation Act (16 U.S.C. 839e(i))

1 is amended by inserting “power” after “establishing” in
2 the first sentence.

3 (4) Section 9(d) of the Pacific Northwest Electric
4 Power Planning and Conservation Act (16 U.S.C.
5 839f(d)) is amended by striking “transmission access,”
6 and inserting “power” before “services” in the second sen-
7 tence.

8 (5) Section 9(i)(3) of the Pacific Northwest Electric
9 Power Planning and Conservation Act (16 U.S.C.
10 839f(i)(3)) is amended by inserting “power” before “serv-
11 ices” each place it appears, and by striking “trans-
12 mission,” in the first sentence.

13 (e) BONNEVILLE PROJECT ACT.—Section 2(e) of the
14 Bonneville Project Act (16 U.S.C. 832a(e)) is amended
15 by striking the colon and all that follows and inserting
16 a period.

17 **Subtitle C—Other Power**
18 **Marketing Administrations**

19 **SEC. 631. DEFINITIONS.**

20 For purposes of this subtitle:

21 (1) The term “Administrator” means the ad-
22 ministrator of a Federal power marketing adminis-
23 tration.

24 (2) The term “Commission” means the Federal
25 Energy Regulatory Commission.

1 (3) The term “Federal power marketing admin-
2 istrations” means the Western Area Power Adminis-
3 tration, Southwestern Power Administration, and
4 Southeastern Power Administration.

5 (4) The term “power generating agencies”
6 means the Bureau of Reclamation, the Army Corps
7 of Engineers, and the International Boundary and
8 Water Commission.

9 (5) The term “public utility” means a public
10 utility as defined in section 201(e) of the Federal
11 Power Act.

12 **SEC. 632. WHOLESALE POWER SALES BY FEDERAL POWER**
13 **MARKETING ADMINISTRATIONS.**

14 (a) RATES, TERMS, AND CONDITIONS.—(1) All rates
15 and charges made, demanded, or received for the sale of
16 electric energy and capacity by each Federal power mar-
17 keting administration to its electric energy customers shall
18 be the lowest possible rates and charges that will recover
19 from such customers over a reasonable period of years,
20 in accordance with sound business principles, all costs in-
21 curred by the United States for the production of electric
22 energy sold by such Federal power marketing administra-
23 tion, including repayment of the capital investment allo-
24 cated to power and costs assigned by Acts of Congress
25 to power for repayment.

1 (2) The Commission may modify proposed rates sub-
2 mitted by any Federal power marketing administration
3 and establish terms and conditions consistent with this
4 subsection. In its determination of rates, terms, and condi-
5 tions for the sale of electric energy and capacity by the
6 Federal power marketing administrations the Commission
7 shall not review policy judgments and interpretations of
8 laws and regulations made by the power generating agen-
9 cies.

10 (b) EXISTING RATES.—All rates, terms, and condi-
11 tions for the sale of electric energy and capacity by the
12 Federal power marketing administrations placed into ef-
13 fect on a final basis prior to the date of enactment of this
14 Act shall remain in full force and effect unless the Com-
15 mission determines, after a hearing held upon its own mo-
16 tion or upon complaint, that the rates, terms, and condi-
17 tions are inconsistent with subsection (a)(1) and estab-
18 lishes new rates, terms, and conditions.

19 (c) PERIODIC REVIEW.—The Administrators shall
20 periodically review the rates and charges made, demanded,
21 or received by each Federal power marketing administra-
22 tion for the sale of electric energy and capacity. In the
23 event the rates and charges made, demanded, or received
24 by any Federal power marketing administration are incon-
25 sistent with subsection (a)(1), the Administrator of that

1 administration shall propose revised rates. Such rates
2 shall be established in accordance with this section, section
3 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), sec-
4 tion 9(c) of the Reclamation Project Act of 1939 (43
5 U.S.C. 485h(c)), and the Acts specifically applicable to in-
6 dividual projects of the power systems of the power gener-
7 ating agencies.

8 **SEC. 633. REGULATION OF FEDERAL POWER MARKETING**
9 **ADMINISTRATION TRANSMISSION SYSTEMS.**

10 Notwithstanding section 201(f) of the Federal Power
11 Act, sections 202(h), 205, 206, 208, and 210 through 213
12 and sections 301 through 304, 306, 307 (except the last
13 sentence of paragraph (c)), 308, 309, 313, and 317 of the
14 Federal Power Act apply to the transmission of electric
15 energy by the Federal power marketing administrations
16 to the same extent and in the same manner as such provi-
17 sions apply to the transmission of electric energy in inter-
18 state commerce by a public utility otherwise subject to the
19 jurisdiction of the Commission under part II of such Act.

20 **SEC. 634. ACCOUNTING.**

21 Not later than six months after the date of enactment
22 of this Act, the Commission shall promulgate rules con-
23 taining each of the following:

24 (1) ACCOUNTING PRINCIPLES AND REQUIRE-
25 MENTS.—Procedures to ensure that the Federal

1 power marketing administrations utilize the same
2 accounting principles and requirements as are appli-
3 cable to public utilities pursuant to parts II and III
4 of the Federal Power Act (16 U.S.C. 792 and fol-
5 lowing) with respect to accounting for revenue, ex-
6 penses, investments, and depreciation.

7 (2) COMPLIANCE.—Procedures for the filing of
8 complaints with the Commission by interested per-
9 sons seeking to ensure compliance with the proce-
10 dures of this section.

11 (3) ADMINISTRATIVE RECONCILIATION.—Proce-
12 dures to ensure that the power generating agencies
13 and the Administrators maintain a consistent set of
14 books and records for purposes of repayment obliga-
15 tions.

16 **SEC. 635. APPLICATION OF ANTITRUST LAW.**

17 (a) IN GENERAL.—Each Federal power marketing
18 administration shall be subject to the antitrust laws of the
19 United States with respect to its sale of electric energy
20 and capacity and the operation of its transmission system.
21 For purposes of this section, the term “antitrust laws”
22 has the meaning given such term in subsection (a) of the
23 first section of the Clayton Act (15 U.S.C. 12(a)), except
24 that such term includes section 5 of the Federal Trade

1 Commission Act (15 U.S.C. 45) to the extent that such
2 section 5 applies to unfair methods of competition.

3 (b) DAMAGES.—No damages, interest on damages,
4 costs, or attorney's fees may be recovered under section
5 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
6 15c) from a Federal power marketing administration.

7 **TITLE VII—ENVIRONMENTAL** 8 **PROVISIONS**

9 **SEC. 701. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

10 Section 1212 of the Energy Policy Act of 1992 is
11 amended to read as follows:

12 **“SEC. 1212. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

13 “(a) INCENTIVE PAYMENTS.—For electric energy
14 generated and sold by a qualified renewable energy facility
15 during the incentive period, the Secretary of Energy (re-
16 ferred to in this section as the ‘Secretary’) shall make,
17 subject to the availability of appropriations, incentive pay-
18 ments to the owner or operator of such facility. The
19 amount of such payment made to any such owner or oper-
20 ator shall be as determined under subsection (e) of this
21 section. Payments under this section may only be made
22 upon receipt by the Secretary of an incentive payment ap-
23 plication which establishes that the applicant is eligible to
24 receive such payment and which satisfies such other re-
25 quirements as the Secretary deems necessary. Such appli-

1 cation shall be in such form, and shall be submitted at
2 such time, as the Secretary shall establish.

3 “(b) QUALIFIED RENEWABLE ENERGY FACILITY.—

4 For purposes of this section, a ‘qualified renewable energy
5 facility’ is a facility which generates electric energy for
6 sale using solar energy, wind, biomass (including methane
7 gas from landfills), geothermal, or a small hydroelectric
8 power project (as defined in section 408(a)(1) of the Pub-
9 lic Utility Regulatory Policies Act of 1978).

10 “(c) ELIGIBILITY WINDOW.—Payments may be made
11 under this section only for electric energy generated from
12 a qualified renewable energy facility first used during the
13 period of 10 fiscal years beginning with the first full fiscal
14 year occurring after the date of enactment of this Act.

15 “(d) INCENTIVE PERIOD.—A qualified renewable en-
16 ergy facility may receive payments under this section for
17 a period of 10 fiscal years (referred to in this section as
18 the ‘incentive period’). Such period shall begin with the
19 fiscal year in which electric energy generated from the fa-
20 cility is first eligible for such payments.

21 “(e) AMOUNT OF PAYMENT.—

22 “(1) IN GENERAL.—Payments made by the
23 Secretary under this section to the owner or opera-
24 tor of a qualified renewable energy facility shall be
25 based on the number of kilowatt hours of electric en-

1 ergy generated by the facility through the use of
2 solar, wind, biomass, geothermal, or hydroelectric
3 energy during the incentive period. For any facility,
4 the amount of such payment shall be 1.5 cents per
5 kilowatt hour, adjusted as provided in paragraph
6 (2).

7 “(2) ADJUSTMENTS.—The amount of the pay-
8 ment made to any person under this section as pro-
9 vided in paragraph (1) shall be adjusted for inflation
10 for each fiscal year beginning after calendar year
11 1999 in the same manner as provided in the provi-
12 sions of section 29(d)(2)(B) of the Internal Revenue
13 Code of 1986, except that in applying such provi-
14 sions the calendar year 1999 shall be substituted for
15 calendar year 1979.

16 “(3) DUPLICATE BENEFITS.—The amount of
17 the payment made to any person under this section
18 for any facility in any taxable year shall be reduced
19 by the amount that such person receives as a tax
20 credit for such facility in that taxable year under
21 section 45 or section 29 of the Internal Revenue
22 Code of 1986.

23 “(f) SUNSET.—No payment may be made under this
24 section to any qualified renewable energy facility after the
25 expiration of the period of 20 fiscal years beginning with

1 the first full fiscal year occurring after the date of enact-
2 ment of this Act, and no payment made be made under
3 this section to any such facility after a payment has been
4 made with respect to such facility for a period of 10 fiscal
5 years.

6 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated to the Secretary to carry
8 out the purposes of this section such sums as may be nec-
9 essary for each of the fiscal years 2000 through 2004.”.

10 **SEC. 702. NET METERING.**

11 (a) IN GENERAL.—Title II of the Public Utility Reg-
12 ulatory Policies Act of 1978 (16 U.S.C. 824a–1 and fol-
13 lowing) is amended by redesignating section 214 as 215
14 and inserting after section 213 the following new section:

15 **“SEC. 214. NET METERING.**

16 “(a) DEFINITIONS.—For purposes of this section:

17 “(1) The term ‘eligible on-site generating facil-
18 ity’ means a facility on the site of a retail electric
19 consumer with a peak generating capacity of 20 kilo-
20 watts or less that is fueled solely by solar energy,
21 wind, biomass, or geothermal.

22 “(2) The term ‘net metering service’ means
23 service to a retail electric consumer under which
24 electric energy generated by that consumer from an
25 eligible on-site generating facility and delivered to

1 local distribution facilities through the same meter
2 or a comparable metering system through which
3 purchased electric energy is received may be used to
4 offset electric energy provided by the retail electric
5 supplier to the retail electric consumer during the
6 applicable billing period. In no event shall the net
7 electric energy bill be less than zero during the ap-
8 plicable billing period.

9 “(3) The terms ‘local distribution company’,
10 ‘retail electric consumer’, and ‘retail electric sup-
11 plier’ have the meanings given such terms in section
12 3 of the Federal Power Act.

13 “(b) REQUIREMENT TO PROVIDE NET METERING
14 SERVICE.—Each retail electric supplier shall make avail-
15 able upon request net metering service to any retail elec-
16 tric consumer that the supplier currently serves or solicits
17 for service if the retail electric consumer pays any costs
18 associated with providing such service.

19 “(c) STATE AUTHORITY.—This section does not pre-
20 clude a State from imposing additional requirements con-
21 sistent with the requirements in this section, including the
22 imposition of a cap limiting the amount of net metering
23 available in the State. Nothing in this Act or any other
24 Federal law preempts or otherwise affects authority under
25 State law to require a retail electric supplier to make avail-

1 able net metering service to a retail electric consumer
2 which the supplier serves or offers to serve.”.

3 (b) TABLE OF CONTENTS.—The table of contents for
4 title II of the Public Utility Regulatory Policies Act of
5 1978 (16 U.S.C. 2601 and following) is amended by in-
6 serting the following after the item relating to section 213
7 and redesignating the item relating to section 214 as 215:
“Sec. 214. Net metering.”.

8 **SEC. 703. STATE RENEWABLE ENERGY PORTFOLIO STAND-**
9 **ARDS.**

10 Nothing in this Act or any other Federal law affects
11 the authority of a State to require that a specific percent-
12 age of the electric energy sold by retail electric suppliers
13 to retail electric consumers in that State be generated by
14 solar energy, wind, biomass, geothermal, or any combina-
15 tion thereof, or to require such suppliers to purchase
16 tradable credits to satisfy all or a portion of such require-
17 ment. Upon application of two or more States, the Sec-
18 retary of Energy may establish a system for the trading
19 of such credits, consistent with State law.

20 **TITLE VIII—PROVISIONS RELAT-**
21 **ING TO INTERNAL REVENUE**
22 **CODE**

23 **【Text of title VIII identical to text of title VIII of**
24 **H.R. 2944】**

1 **TITLE IX—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 901. STUDY.**

4 The Secretary of Energy shall report to the Congress
5 within two years after the enactment of this Act on the
6 extent to which actions taken by the States have removed
7 regulatory and statutory barriers to interstate commerce
8 in electric energy. The report shall describe any remaining
9 barriers to interstate commerce and shall make rec-
10 ommendations to the Congress for additional action that
11 may be necessary to lower or eliminate barriers to inter-
12 state commerce in electric energy consistent with the de-
13 velopment of a fully competitive marketplace.

14 **SEC. 902. STUDY OF STATE REGULATION.**

15 The Federal Energy Regulatory Commission shall
16 study State regulation of the transmission component of
17 bundled retail sales of electric power and submit a report
18 to Congress containing the results of such study. The
19 study shall examine whether such regulation results in
20 undue discrimination or preference in the transmission of
21 electric energy in interstate commerce or in the sale of
22 electric energy at wholesale in interstate commerce and
23 make recommendations on amendments to Federal law.